

GAHC010263792023



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Bail Appln./4304/2023

JABIR HUSSAIN
SON OF ANSAR ALI, RESIDENT OF VILLAGE- ALAPUR, P.S. PATHARKANDI,
DISTRICT- KARIMGANJ, ASSAM

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR OF ASSAM

Advocate for the Petitioner : MR. D K BAGCHI

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

ORDER

Date : 17-02-2024

- 1.** Heard Mr. D.K. Bagchi, learned counsel for the petitioner.
- 2.** The petitioner, namely, Jabir Hussain has filed this application under Section 439 Cr.PC with prayer for bail as he is behind bars since 06.02.2022 in connection with Special NDPS P.S. Case No. 67/2021 arising out of Patharkandi

P.S. Case No. 404/2021 registered u/s 20(C)/29 of the NDPS Act, 1985.

3. Heard Mr. B.B. Gogoi, learned Addl. PP, Assam.

4. It is submitted on behalf of the petitioner that the petitioner is more than 2 years behind bars. Only 4 witnesses out of 7 enlisted witnesses have been examined so far. Only the seizure witnesses have been examined. The prime accused against whom the allegation is that, the contraband was found in his possession and was seized from his possession has already been enlarged on bail. The petitioner has also prayed for bail on the ground of parity. Through an affidavit on behalf of the petitioner it has been submitted that this case relates to recovery of 2.82 kgs of yaba tablets. One of the accused namely Mahbub Ullah @ Habib Ullah was also recently granted bail by this Court vide order dated 26.09.2023 passed in B.A. No. 2550 of 2023 after considering the length of detention of 598 days. This case has been pending only for the updated scanned copies of the LCR which has been annexed along with the petition which clearly reflects that the witnesses who were examined in connection with this case have not supported the prosecution case and this case will not entail conviction. The deposition of PW-1 clearly reveals that there are no incriminating materials against the petitioner and the rigour of Section 37 of the NDPS Act is not applicable to this case.

5. The learned Addl. PP has submitted that 4 witnesses have already been examined. Only the IO and the informant are yet to be examined. At this stage it cannot be ascertained that this case will not entail conviction. The question of parity and length of detention cannot be considered in this case as it has been held by Hon'ble the Supreme Court in **Tarun Kumar v. Assistant Director, Directorate of Enforcement**, reported in **2023 (4) SC Crime 442** that:-

“It is axiomatic that the principle of parity is based on the guarantee of positive equality before law enshrined in Article 14 of the Constitution. However, if any illegality or irregularity has been committed in favour of any individual or a group of individuals, or a wrong order has been passed by a judicial forum, others cannot invoke the jurisdiction of the higher or superior court for repeating or multiplying the same irregularity or illegality or for passing similar wrong order. Article 14 is not meant to perpetuate the illegality or irregularity. If there has been a benefit or advantage conferred on one or a set of people by any authority or by the court, without legal basis or justification, other persons could not claim as a matter of right the benefit on the basis of such wrong decision.”

6. I have considered the submissions at the Bar with circumspection and I have also perused the Case Diary. In the light of the decision of Hon’ble the Supreme Court in *Tarun Kumar’s* case (*supra*), it is held that the prayer of parity cannot be considered at this stage. The length of detention also cannot be considered at this juncture. The trial is progressing at a regular pace. This case cannot be considered to be a case where the personal liberty of the petitioner has been curtailed due to the procrastination of trial by the Court or by the prosecution. The petitioner is facing trial in connection with an incident relating to recovery of 2 kgs 82 grams of yaba tablets from the possession of the co-accused Nasir Uddin. Charge-sheet has been laid against the petitioner in connection with this case. At this juncture the technicalities of the evidence cannot be considered. The LCR reveals that the accused Nazir Uddin is still behind bars. He has not been granted bail.

7. Considering all aspects and in view of my foregoing discussions, petition with prayer of bail stands rejected at this stage.

Send back the Case Diary.

JUDGE

Comparing Assistant