

GAHC010264072023



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

Case No. : Bail Appln./4305/2023

ABDUL SUKKUR
S/O- LATE ABDUS SALAM SODIOL, R/O- VILL- DEORAIL, POLICE STATION-
BADARPUR, DISTRICT- KARIMGANJ, ASSAM

VERSUS

THE STATE OF ASSAM
TO BE REPRESENTED BY THE PUBLIC PROSECUTOR

Advocate for the Petitioner : MR. M A CHOUDHURY

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

ORDER

Date : 10-01-2024

1. Heard Mr. A. Ahmed, learned counsel for the petitioner Abdul Sukkur.
2. The petitioner has filed this application under *Section 439 of the Code of Criminal Procedure* as he is behind bars since 29.01.2022 in connection with *Special Case (NDPS) No. 11/2022 arising out of Badarpur Police Station Case No. 31/2022 registered under Sections 20(a)/22(c)/29 of the NDPS Act, 1985.*

3. Heard Mr. B.B. Gogoi, learned Additional Public Prosecutor for the respondent State of Assam.

4. It is submitted on behalf of the petitioner that the petitioner has been languishing in jail since 29.01.2022 but trial is dragging with a leaden feet. Only two witnesses have been examined and since 19.06.2023, not a single witness has been examined. The seizure witnesses have not supported the petitioner's case.

5. The petitioner has relied on the decision of Hon'ble the Supreme Court in *Rabi Prakash Vs. the State of Odisha in Special Leave to Appeal (Crl.) No. 4169/2023* wherein vide order dated 13.07.2023 it has been observed that:

"4. As regard to the twin conditions contained in Section 37 of the NDPS Act, learned counsel for the respondent – State has been duly heard. Thus, the 1st condition stands complied with. So far as the 2nd condition re: formation of opinion as to whether there are reasonable grounds to believe that the petitioner is not guilty, the same may not be formed at this stage when he has already spent more than three and a half years in custody. The prolonged incarceration, generally militates against the most precious fundamental right guaranteed under Article 21 of the Constitution and in such a situation, the conditional liberty must override the statutory embargo created under Section 37(1)(b)(ii) of the NDPS Act."

6. In the instant case one of the twin conditions has not been satisfied as the seizure witnesses have not supported the prosecution case. The petitioner has also relied on the decision of Hon'ble the Supreme Court in *Chitta Biswas Alias Subhas Vs. The State of West Bengal* wherein it has been observed that:

"The appellant was arrested on 21.07.2018 and continues to be custody. It appears that out of 10 witnesses cited to be examined in support of the case of prosecution four witnesses have already been examined in the trial.

Without expressing any opinion on the merits or demerits of the rival submissions and considering the facts and circumstances on record, in our view, case for bail is made out. We therefore, allow this appeal and direct as under :

(a) Subject to furnishing bail bond in the sum of Rs.2 lakhs with two like sureties to the satisfaction of the Judge, Special Court, NDPS Act, Nadia at Krishnagar, the appellant shall be released on bail.

(b) The Special Court may impose such other conditions as it deems appropriate to ensure the presence and participation of the appellant in the pending trial."

7. The petitioner has also relied on the decision of Hon'ble the Supreme Court dated 17.10.2023 in *Anjan Nath Vs. The State of Assam in Special Leave to Appeal (Crl.) No. 9560/2023* wherein it has been observed that:

"3. Taking into consideration the fact that the similarly circumstanced accused has already been released on bail by this Court, we are inclined to grant bail to the petitioner.

4. The petitioner is directed to be released on bail in connection with Special (NDPS) Case No. 122 of 2021 under Section 22(c)/25/29 of the NDPS Act pending before the Special Judge, Karimganj arising out of FIR No. 432 of 2021 (G.R. No. 3617/2021) registered at Police Station Nilambazar, to the satisfaction of the Trial Court."

8. It is submitted that vide order dated 19.07.2023 in Bail Application No. 20022/2023, the bail petition of Anjan Nath was rejected by this Court who was apprehended with 2,59,000 Yaba tablets. The petitioner's bail petition was rejected and the petitioner preferred an appeal before Hon'ble the Supreme Court and he was enlarged on bail by the order dated 17.10.2023 by Hon'ble the Supreme Court.

9. The learned Additional Public Prosecutor has raised serious objection stating that charges have been framed against the petitioner under Sections 22(c)/29 of the NDPS Act. The petitioner was apprehended with a huge quantity of Yaba tablets. As two witnesses have already been examined in connection with this case, it cannot be considered to be a case where trial has been

procrastinated by the prosecution.

10. I have perused the scanned copies of the LCR.

11. On 03.09.2022 this case was fixed for consideration of charges and thereafter, charges were framed on 03.09.2022 and this case was fixed for case management hearing continuously up-to 15.03.2023. Thereafter, evidences of two witnesses have been recorded. It is true that seizure witnesses have been declared as hostile witnesses.

12. I have considered the submissions of the learned counsel for the petitioner that the order dated 19.07.2023 in connection with Bail Application No. 2022/2023 reveals that the petitioner Anjan Nath was behind bars for one and a half year and vide order dated 17.10.2023 in Anjan Nath's case (supra), Hon'ble the Supreme Court was pleased to release the petitioner on bail after taking into consideration the fact that under similar circumstances, accused have been released on bail by Hon'ble the Supreme Court.

13. I have relied on the decision of Hon'ble the Supreme Court in Anjan Nath's case (supra).

14. In view of the decisions of Hon'ble the Supreme Court in *Rabi Prakash Vs. State of Odisha* and *Chitta Biswas Alias Subhas Vs. The State of West Bengal* and considering the submission of the petitioner that he will abide by any bail conditions if imposed, the petitioner is enlarged on bail on furnishing a bail bond of Rs.2,00,000/- (*Rupees Two Lacs*) with two solvent sureties of like amount to the satisfaction of learned Sessions Judge, Karimganj under the conditions:

1. *That the petitioner shall refrain from such activities with which he is alleged.*
2. *The petitioner shall appear before the trial Court regularly and shall not jump the bail.*

3. *The petitioner shall cooperate with the investigation.*

15. On breach of any of the bail conditions, bail order shall stand cancelled.

16. I have considered the peculiar and unique circumstances of this case under which the petitioner was behind bars, and this order may be not be taken as a precedent.

Bail Application stands disposed of in the above terms.

JUDGE

Comparing Assistant