

GAHC010264662023



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

Case No. : Bail Appln./4360/2023

SAIMAN DEBBARMA
S/O AJIT DEBBARMA
R/O VILL- AMPURA, P.S. AND DIST. KHOWAI, TRIPURA.

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. L R MAZUMDER

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

Date : 03.04.2024

- 1.** Heard Mr. L. R. Mazumder, learned counsel for the petitioner. Also heard Mr. K. K. Das, learned Additional Public Prosecutor, Assam.
- 2.** This application under Section 439 of the Code of Criminal Procedure, 1973, has been filed by the petitioner, namely, Saiman Debbarma, who has been detained behind the bars since 24.10.2021, (for more than 2 years, 5 months) in connection with Special (NDPS) Case No. 103/2021, corresponding to Bazaricherra P.S. Case No. 198/2021, under

Section 20(b)(ii)(C)/29 of the NDPS Act, 1985 pending in the court of learned Special Judge Karimganj.

3. The gist of accusation in this case is that, on 24.10.2021, one K. Musahary, S.I. of Police of Kathaltoli Watch Post, had lodged an FIR before the Officer-In-Charge of Bazaricherra Police Station, *inter alia*, alleging that, on that day, a Naka Checking was conducted at Naka Checking point of Churaibari Watch Post, at National Highway No. 8.
4. During the Naka Checking, a truck bearing Registration No. AS01HC9375 was intercepted and was searched, and during search operation, 413 kgs of suspected *ganja* was recovered from the said truck in 32 packets. The driver of the truck, namely Debo Debo Barma, and the present petitioner, who is the helper of the truck, namely Saiman Debbarma were apprehended from the said truck.
5. On the basis of the FIR, Bazaricherra Police Station Case No. 198/2021 was registered and investigation was initiated.
6. Ultimately, on completion of investigation, charge sheet bearing No. 168/2021, dated 28.12.2021, was laid against the present petitioner and one co-accused under Section 20(b)(ii) (C)/29 of the NDPS Act, 1985.
7. The charges were also framed against the present petitioner under the aforesaid provision of law on 05.07.2022.
8. Learned counsel for the petitioner has submitted that the petitioner was only a handyman of the said truck and he was engaged on the said truck on daily wage basis and he was not aware of the fact that suspected *ganja* was being carried in the said truck.
9. It is also submitted by learned counsel for the petitioner that though the

petitioner has been detained behind the bars for more than 2 years, 5 months, however, out of the 7 listed witnesses, in the charge sheet, only 2 witnesses have been examined till date and there is unlikelihood of culmination of trial very soon and therefore on the ground of prolonged incarceration, the learned counsel for the petitioner has prayed for allowing the present petitioner to go on bail.

10. On the other hand, Mr. K.K. Das, learned Additional Public Prosecutor, has opposed the grant of bail to the present petitioner on the ground that the quantity of contraband seized in this case is of commercial quantity and therefore embargo of Section 37 of the NDPS Act, 1985 comes into play and accordingly he has prayed for rejection of prayer for bail by the petitioner.
11. I have heard the submissions made by learned counsel for both the sides and have perused the scanned copy of the case record of Special (NDPS) Case No. 103/2021.
12. On perusal of the case record, it appears that though the petitioner who was only a handyman in the said truck from where the seized contraband was recovered has been detained behind the bars since 24.10.2021, however only two witnesses have been examined till date. It appears that the petitioner has been detained for a long period of time, however his trial has not been progressing.
13. The Apex Court of India in "***Mohd Muslim @ Hussain Vs. State***" (***NCT of Delhi***)" reported in "***2023 SCC Online SC 352***" has observed that "Grant of bail on ground of undue delay in trial, cannot be said to be fettered by Section 37 of the NDPS Act, 1985.

14. Similarly, the Apex Court of India has also observed in "***Rabi Prakash Vs. The State of Odisha***" reported in "***2023 Live Law SC 533***" that "prolonged incarceration, generally militates against the most precious fundamental right guaranteed under Article 21 of the Constitution of India and in such a situation, the conditional liberty must override the statutory embargo created under Section 37(1)(b)(ii) of the NDPS Act, 1985."
15. This court is also of considered opinion that while considering an application for bail involving commercial quantity of contraband, if the court comes to a finding that there has been undue delay in completion of trial and during that time the petitioner has been incarcerated and same incarceration is a long incarceration, he would be entitled to get bail mainly on the ground of such prolonged incarceration.
16. Under such circumstances, the fundamental right to life and personal liberty guaranteed under Article 21 of the Constitution of India to the petitioner would outweigh the fetters imposed under Section 37 of the NDPS Act, 1985.
17. It is also pertinent to mention herein that the Supreme Court of India had granted bail to the accused facing charges for possession of commercial quantity of contraband only on the ground of prolonged incarceration in "***Shariful Islam @ Sarif Vs. State of West Bengal***" (order dated **04.08.2022 in SLP Criminal No. 4173/2022**), wherein the accused was detained behind bars for one year and six months.
18. In "***Nitesh Adhikari Vs. State of West Bengal***" (Order dated **04.05.2022 in SLP Criminal No. 5769/2022**), the Apex Court granted bail to the accused facing accusation under Section 21(c) of the

NDPS Act, 1985 on the ground of incarceration of one year seven months.

19. Similarly in **"Md. Salman Hanif Shaikh Vs. State of Gujarat" (Order dated 22.08.2022 in SLA Criminal No. 5530/2022)**, the petitioner was granted bail, by the Apex Court, on the ground of prolonged incarceration of two years.
20. In **"Tapas Mandal Vs. State of West Bengal," (order dated 14.09.2023) in Spl. Leave to Appeal (Crl. No. 8464/2023)** as well as in **"Man Mandal and Another Vs. State of West Bengal," (order dated 14.09.2023) passed in Spl. Leave to Appeal (Crl. No. 8656/2023)**, the Apex Court granted bail to the petitioners taking into consideration the fact that the petitioners have been incarcerated for a period of almost two years and the trial is not likely to be taken up for hearing in the immediate near future.
21. In the instant case also as already stated herein before, the petitioner has been detained behind the bars for last 2 years, 5 months and 11 days and the trial has not progressed as only two witnesses have been examined, the incarceration for the aforesaid period under the circumstances of this case in the considered opinion of this court is long enough to outweigh the embargo of Section 37 of the NDPS Act and therefore, this court is of considered opinion that the petitioner is entitled to get bail in this case.
22. In view of above, the above named petitioner is allowed to be released on bail on furnishing a bond of Rs. 50,000/- with one surety of like amount to the satisfaction of the trial court with following conditions that :-
 - i. the petitioner shall cooperate in the trial of NDPS Case No.

103/2021 and shall regularly appear before the trial court as and when so required by the trial court.

- ii.** the petitioner shall not directly or indirectly make any inducement threat or promise to any person who may be acquainted with the facts of the case so as to dissuade such person from disclosing such facts before the trial court.
- Iii.** the petitioner shall provide his contact details before the trial court.
- iv.** the petitioner shall not leave the jurisdiction of the trial court without prior leave of the trial court and if and when such leave is granted by the trial court, the petitioner shall submit his leave address and contact details during such leave before the trial court.

23. With above observation, this bail application is hereby disposed of.

JUDGE

Comparing Assistant