

GAHC010266352023



2024:GAU-AS:11760

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

Case No. : Bail Appln./4312/2023

SAMRUL ISLAM AND ANR
S/O YASIN ALI
R/O VILL- PAIKAN, GUMRAH, P.S. KATIGORAH,
DIST. CACHAR, ASSAM,
PIN-788815

2: MONWAR HUSSAIN BARBHUIYAN
S/O ABDUL RAJAK BARBHUIYA
R/O VILL- PAIKAN
GUMRAH
P.S. KATIGORAH

DIST. CACHAR
ASSAM

PIN-78881

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. M AHMED, MD I H LASKAR, MR. D HUSSAIN

Advocate for the Respondent : PP, ASSAM,

**BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA**

ORDER

Date : 27.11.2024

Heard Mr. M. Ahmed, learned counsel for the petitioners. Also heard Mr. D. P. Goswami, learned Additional Public Prosecutor for the State respondent.

2. This is an application under Section 483 of BNSS, 2023, praying for grant of bail to the accused/petitioner, who has been arrested in connection with Special (NDPS) Case No. 16/2022, pending before the court of learned Additional Sessions Judge (F.T.C.), Karimganj, arising out of Badarpur P.S. Case No. 35/2022, under Section 22(c)/25/29 of NDPS Act, 1985.

3. Scanned copy of the case record has already been received. Perused the same. Heard both sides.

4. It is submitted by Mr. Ahmed, learned counsel for the petitioners, that the present accused/petitioners are innocent and nothing has been recovered from their conscious possession. He further submitted that the accused got arrested in connection with this case on 03.02.2022 and since then, they are in custody. The Charge-Sheet of the case was filed on 26.06.2022 and the charge was accordingly framed on 21.09.2022 and since then, the case is fixed for evidence. More so, till date, out of 8 (eight) numbers of witnesses, only 4 (four) numbers of witnesses could be examined by the prosecution. He accordingly submitted that the PW-1 was examined on 03.05.2023, PW-2 was examined on

12.09.2023, PW-3 was examined on 08.11.2023 and PW-4 was on 16.02.2024 and the next date of evidence was fixed on 19.11.2024. The accused is behind the bar for last 2 (two) years 9 (nine) months & 13 (thirteen) days, but till date, the prosecution could examine only 4 (four) numbers of witnesses out of total 8 (eight) numbers of witnesses. Mr. Ahmed, accordingly, submitted that there is no probability of completion of trial within near future as lots of witnesses are yet to be examined by the prosecution and therefore he submitted that considering the period of long incarceration, the petitioners may be enlarged on bail. He further submitted that though the earlier bail applications of the present petitioners were rejected by this Court, but the present petition is filed to consider their bail prayer only on the ground of long incarceration.

5. In support of his submission, Mr. Ahmed, learned counsel for the petitioners, further relied on the following decisions:

- (i) **Rabi Prakash Vs. State of Odisha [2023 LiveLaw (SC) 533**
- (ii) **Zakirul Islam @ Md Zakirul Islam @ Zakir Vs. The State of Assam [SLP (Crl.) No(S) 3632/2024]**
- (iii) **Hussain Ahmed Vs. The State of Assam [Bail Appln. No. 2979/2023 (Decided on 11.12.2023)]**
- (iv) **Ahmed Hussain @ Ahmod Hussain Vs. The State of Assam [Bail Appln. No.44/2024 (Decided on 21.06.2024)]**

(v) **Jitul Ali Vs. The Union of India [Bail Appln. No. 4258/2023 (Decided on 26.06.2024)]**

(vi) **Alim Uddin & Anr. Vs. The State of Assam [Bail Appln. No. 1997/2024 (Decided on 15.07.2024)]**

6. Mr. Goswami, learned Additional Public Prosecutor, submitted in this regard that the contraband was recovered from the conscious possession of the present accused/petitioner and there are sufficient incriminating materials in the Case Diary against the present accused/petitioners showing their direct involvement in the alleged offence. He further submitted that as the case is of commercial quantity, rigor of Section 37 of NDPS Act will follow. He further submitted that in the case of **Narcotics Control Bureau Vs. Mohit Agarwal [Criminal Appeal Nos. 1001-1002 of 2022, arising out of SLP (Crl.) No. 6128 of 2021]**, the Hon'ble Apex Court has held that long incarceration or delay in disposal only cannot be the sole ground for entertaining the bail application. Accordingly, he submitted that this is a case of commercial in nature wherein huge quantity of contraband is alleged to have been recovered from the possession of the present accused/petitioners and hence, their prayer may not be considered only on the ground of period of incarceration.

7. After hearing the submissions made by the learned counsels for both sides, I have perused the scanned copy of the case record and the annexures filed along with the petition.

8. As per the allegation, information was received by the Investigating Officer

from a reliable source regarding carrying of narcotic substance by a vehicle (truck) and on the basis of the said information, the S.I. of Badarpur Superintendent of Police along with other Police Officials, arrived at place of occurrence and detained the said vehicle. During search, 77 numbers of cartoons containing huge quantity of bottles of Chlorpheniramine Maleate & Codeine Phosphate Cough Linctus suspected to be Narcotic drugs were recovered from the possession of accused/petitioners and accordingly, observing all formalities, those were seized in presence of the witnesses. However, it is the case of the petitioners that both the accused/petitioners were arrested by the police only on suspicion and the contrabands were not recovered from the conscious possession of the accused/petitioners.

9. It is a fact that the present accused/petitioners were arrested in connection with this case on 03.02.2022 with the allegation of recovery of commercial quantity of contraband from their possession and since then, the accused/petitioners are in custody. After their arrest and on completion of investigation, police find *prima facie* materials against them and accordingly filed the Charge-Sheet against them.

10. Thus, it is seen that the case is of commercial quantity and hence, the rigor of Section 37 NDPS Act will follow.

11. For ready reference, Section 37 NDPS Act is extracted hereinbelow:

"37. Offences to be cognizable and non-bailable.

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973

(b) No person accused of an offence punishable for offences under section 19 or section 24 or section 27A and also for offences involving commercial quantity shall be released on bail or on his own bond unless—

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.”

12. Thus, as per Section 37 (1) (b) of NDPS Act, the bail can only be granted, if there is no reasonable ground for believing that accused is not guilty of such offence and that he is not likely to commit any offence while on bail. But, from the materials available in the case record, there cannot be any reasons to believe that the accused/petitioners are not guilty of such offence or they are not likely to commit any offence while on bail.

13. But, in the same time, it cannot be denied that the accused/petitioners are behind the bar for last 2 (two) years 9 (nine) months & 13 (thirteen) days from the date of their arrest and till then, the prosecution has been able to examine only 4 (four) numbers of witnesses out of total 8 (eight) numbers of witnesses of witnesses and it also cannot be denied that to examine the remaining witnesses, the prosecution may take a considerable period for completion of the trial.

14. In the case of **Rabi Prakash (supra)**, as relied by the learned counsel for the petitioner, the Apex Court has granted bail to the accused with a view that *“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)9ii) of the NDPS Act.”*

15. In the case of **Chitta Biswas @ Subash (supra)** also, the bail was granted by the Apex Court considering the long period of incarceration and also considering the fact that out of 10 (ten) numbers of witnesses, only 4 (four) witnesses were examined by the prosecution.

16. Again, in the case of **Nitish Adhikary @ Bapan (supra)**, considering the period of detention of 1 year 7 months, the bail was granted considering that the prosecution could examine only one witness and also considering that the case is at the preliminary stage of trial.

17. Further, in the case of **Shariful Islam @ Sharif (supra)** also, the Apex Court had considered the period of incarceration, i.e. 1 year 6 months, and the bail was granted.

18. The Apex Court in the case of **Mohammed Salman Hanif Shaikh (supra)** also granted bail to the accused without expressing any views on the merits of the case and only taking into consideration the period of custody.

19. In the case of **Karnail Singh Vs. The State of Odisha [Criminal Appeal No. 2027/2022, arising out of SLP(Crl) No. 9067/2022 (Decided on 22.11.2022)]** as well as in **Dheeraj Kumar Shukla (supra)** also, the Apex Court also expressed the same view and granted bail to the accused considering the period of incarceration.

20. Same view has been expressed by the Apex Court in the case of **Anjan**

Nath (supra), as relied by the learned counsel for the petitioner.

21. In the instant case, it is seen that there are some materials available in the Case Diary and on the basis of which, the Investigating Officer has also filed the Charge-Sheet against the present accused/petitioners showing their involvement in the alleged offence. But it is also seen that in spite of filing of the Charge-Sheet in the year 2022, the prosecution could examine only 4 (four) numbers of witnesses out of total 8 (eight) numbers of witnesses, though it a fact that the accused/petitioners are behind the bar for last 2 (two) years 9 (nine) months & 13 (thirteen) days.

22. In view of above and also considering the observation made by the Apex Court in the various judgments, as discussed above, and further considering the other facts and circumstances of this case, this Court is of the opinion that the period of long incarceration undergone by the accused/petitioners for more than last 2 (two) years 9 (nine) months & 13 (thirteen) days may be considered as a ground for bail with the conditional liberty considering the fundamental right guaranteed under Article 21 of the Constitution and, therefore, I am inclined to grant bail to the present accused/petitioners.

23. Accordingly, it is provided that on furnishing a bond of Rs. 50,000/- (Rupees twenty thousand) only each with 2 (two) sureties of like amount, one surety has to be a government servant, to the satisfaction of the learned Special Judge, Karimganj, the accused/petitioners, namely, (i) Samrul Islam & (ii) Monwar Hussain Barbhuiyan, be enlarged on bail, subject to the following conditions:

- (i) that the petitioners shall make themselves available for interrogation by the Investigating Officer as and when required;
- (ii) that the petitioners shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer; and
- (iii) that the petitioners shall not leave the jurisdiction of the learned Special Judge, Karimganj, without prior permission.

24. In terms of above, this bail application stands disposed of.

JUDGE

Comparing Assistant