

GAHC010268222023



THE GAUHATI HIGH COURT AT GUWAHATI
(The High Court of Assam, Nagaland, Mizoram and Arunachal Pradesh)

PRINCIPAL SEAT AT GUWAHATI

Bail Application No. 4336/2023

1) Sajan Ahmed Barbhuiya, aged 32 years,
S/o Abdul Salam Barbhuiya.

2) Rubel Ahmed Barbhuiya,
Aged about 21 years,
S/o Samir Uddin Barbhuiya.

Both are residents of Kashipur Part-II,
P.S.-Silchar, District-Cachar, Assam.

.....Petitioners.

-Versus-

The State of Assam,
Represented by the Public Prosecutor of Assam

.....Respondent.

Advocate for the Petitioner : Mr R Majumdar.

Advocate for the respondent: Mr B B Gogoi, APP, Assam.

BEFORE
HON'BLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

Date of Order : 17.02.2024

ORDER

Heard Mr R Majumdar, learned counsel for the petitioners, 1) Sajan Ahmed Barbhuiya and 2) Rubel Ahmed Barbhuiya.

2. The petitioners have filed this application under Section 439 CrPC, with prayer for bail, as they are behind bars since 19.03.2022, in connection with Special NDPS Case No. 47/2022, arising out of Karimganj PS Case No. 190/2022, registered under Sections 22(c)/25/29 of the Narcotic Drugs And Psychotropic Substances Act, 1985 (NDPS, for short).

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

4. It is submitted on behalf of the petitioners that charge sheet was laid on 15.06.2022 and the petitioners are behind bars for almost 2 years. The

petitioners got roped in connection with this case. They were not in conscious possession of 10000 Yaba Tablets, as alleged. 11 witnesses are enlisted in this case. Only one out of 11 witnesses has been examined so far. Since 31.08.2023, not a single witness has been examined.

5. The learned Additional Public Prosecutor has raised serious objection stating that the merits of this case cannot be considered at this stage. After trial, the merits of the case can be considered. At this stage, the petitioners cannot claim innocence. The prayer of the petitioners that they were taking lift in the vehicle allegedly carrying 10000 Yaba tablets and they are innocent, cannot be considered at this juncture when charge sheet has been laid against them and charges have been framed against them. The evidence will prove this case against the petitioners and the learned trial Court will decide this case. The rigour under Section 37 of the NDPS Act, acts as an embargo.

6. I have considered the submissions at the Bar with circumspection.

7. It is true that the petitioners have been behind bars for almost 2 (two) years. They were forwarded to custody on 19.03.2022.

8. The allegation against the petitioners is that they are drug traffickers

and they were carrying 10000 Yaba Tablets.

9. At this stage, it cannot be ascertained that the petitioners were travelling as passengers in the vehicle, which was apprehended with 10000 Yaba tablets. It is true that there has been a delay and procrastination of trial, but this delay cannot be considered to that extent that the personal liberty of the petitioners has been curtailed and there is a *prima facie* case for bail. At this juncture, the rigour of Section 37 of the NDPS Act is an embargo against the bail petition.

10. The learned counsel for the petitioners has relied on the decision of Hon'ble the Supreme Court in ***Rabi Prakash -Vs- The State of Odisha***, reported in **2023 Live Law (SC)**, wherein, it has been held 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)(ii) of the NDPS Act.”

11. This case is not similar to the case of ***Rabi Prakash (supra)***. It has

been held by Hon'ble the Supreme Court in ***Tarun Kumar -Vs- Assistant Director, Directorate of Enforcement;*** reported in **(2023) 4 Crimes (SC) 442**, that-

“19. 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.”

12. I have considered the submissions at the Bar with circumspection

13. At this juncture, I am not inclined to grant bail to the petitioners.

14. In the light of the decision of Hon'ble the Supreme Court in ***Tarun Kumar (supra)***, petition with prayer for bail is rejected. However, the learned trial Court is directed to expedite the trial for speedy disposal of the case. If the trial is procrastinated any further, the petitioner shall be at liberty to apply for bail, which may be considered by the learned trial Court, as per

merits of the case.

15. Bail Application stands disposed of.

JUDGE

Comparing Assistant