

GAHC010273312023



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

Case No. : Bail Appln./4412/2023

PARI DEORI
W/O JAYANTA BORO, R/O RUWAD NAGAR, KHANAPARA, P.S.-DISPUR,
DIST- DISPUR (M), ASSAM

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

Advocate for the Petitioner : MR. A AHMED

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

26.04.2024

- 1)** Heard Mr. A. Ahmed, learned counsel for the petitioner. Also heard Mr. B. Sarma, learned Additional Public Prosecutor for the State.
- 2)** The hearing is conducted through Video Conferencing.
- 3)** This application under Section 439 of the Code of Criminal

Procedure, 1973 has been filed by the petitioner, namely, Pari Deori, who has been detained behind the bars since 02.08.2022 (*for last 1 year 8 months 24 days*) in connection with NDPS Case No. 235/2022, corresponding to Basistha P.S. Case No. 721/2022, pending before the Court of learned Additional Sessions Judge No. 3 (FTC), Kamrup (M), Assam under Sections 20(b)(ii)(C)/25/29 of the NDPS Act, 1985.

4) The gist of accusation in this case is that on 01.08.2022 one J.J. Gogoi, SI of Police of Jorabat Police Outpost lodged an FIR before the Officer-in-Charge of Basistha of Police Station, *inter-alia*, alleging that after getting a reliable information through secret sources that some suspected ganja would be transported from Meghalaya side to Guwahati, a *naka* checking was conducted at 11th Mile, Jorabat near Cancer Hospital, Jorabat and during *naka* checking operation, one white color Maruti vehicle bearing Registration No. ML-10-C-9707 was intercepted. On search of the said Maruti vehicle, two bags containing 20.80 kg and 19.50 kg of suspected heroin (in total 40.30 kg) were found on the rear seat of the Maruti vehicle and the two persons who were there in the said Maruti car who were apprehended. Later on, on the basis of information given by the arrested accused persons, the present petitioner was also apprehended.

5) On receipt of the said FIR, Basistha P.S. Case No. 721/2022 was registered and investigation was initiated.

6) Ultimately, on completion of the investigation, charge-sheet was laid against the accused persons including the present petitioner under Section 20(b)(ii)(C)/25/29 of the NDPS Act, 1985 on 16.11.2020. On 21.02.2023, the Trial Court framed charges under Sections 20(b)(ii)(C)/29 of the NDPS Act, 1985 against the charge-sheeted accused persons including the

present petitioner.

7) Learned counsel for the petitioner has submitted that nothing was seized from the possession of the present petitioner and she was arrested merely on the basis of statement made by other co-accused persons who were travelling in the Maruti Car from where the contraband was seized.

8) Learned counsel for the petitioner has also submitted that though the charges were framed on 21.02.2023 and the petitioner has been detained behind the bars *for last more than one year eight months*, however, the trial is progressing at a very slow pace and only one prosecution witness has been examined till date. Learned counsel for the petitioner has prayed for allowing the petitioner to go on bail on the ground of attending circumstances of this case as well as on the ground of prolonged incarceration.

9) Learned counsel for the petitioner has also submitted that in the meanwhile name of the co-accused, namely, Vivian Nongrum has already been granted bail by this Court order dated 09.04.2024 pass in Bail Application No. 3408/2023.

10) On the other hand, learned Additional Public Prosecutor has vehemently opposed the grant of bail to the present petitioner on the ground that the contraband seized in this case i.e., Ganja of weighing about 40.30 kg is of commercial quantity and, therefore, the embargo of Section 37 of the NDPS Act, 1985 comes into play.

11) It is submitted by the learned Additional Public Prosecutor that the contraband was found from the conscious possession of the present petitioner and there are sufficient materials against the present petitioner on the record and, therefore, due to embargo of Section 37 of the NDPS Act, 1985, the petitioner may not be allowed to go on bail.

12) I have considered the submissions made by learned counsel for both the sides and have perused the scanned copy of the case record of NDPS Case No. 235/2022.

13) On perusal of the case record, it appears that the petitioner was found in the same vehicle from which the seized contraband i.e., the Ganja weighing about 40.30 kg was recovered. It also appears that the petitioner has been detained behind the bars since 02.08.2022 (*for last 1 year 8 months 24 days*), however till date, only one witness has been examined by the prosecution side and trial has not been fairly progressing.

14) 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.

15) 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."

16) 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.

17) 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.

18) 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.

19) 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.

20) Similarly in "***Md. Salman Hanif Shaikh Vs. State of Gujarat***" (in SLA Criminal No. 5530/2022), the petitioner was granted bail, by the Apex Court, on the ground of prolonged incarceration of two years

21) In the instant case also as already stated herein before that the petitioner has been detained behind the bars *for more than one year and eight months* and the trial has not progressed fairly as only one witness for the prosecution has been examined till date.

22) Under the aforesaid circumstances, the incarceration of the petitioner, in the considered opinion of this Court that under the circumstances of this case the incarceration of the present petitioner is long enough and under such circumstances, her fundamental right to life and personal liberty guaranteed under Article 21 of the Constitution of India outweighs the embargo

of Section 37 of the NDPS Act, 1985.

23) Under the aforesaid circumstances, this Court is of considered opinion that the petitioner is entitled to get bail in this case.

24) In view of above, the above named petitioner is hereby 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:-

i. That the petitioner shall cooperate in the trial of NDPS Case No. 235/2022 and shall regularly appear before the Trial Court as and when so required by the Trial Court;

ii. That 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. That the petitioner shall provide her contact details before the Trial Court;

iv. That 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 her leave address and contact details during such leave before the Trial Court.

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

JUDGE

Comparing Assistant