

GAHC010275152023



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

Case No. : Bail Appln./4436/2023

MANGAL DAS
S/O- MINTU DAS, R/O- VILL.- NABIN SEN COLONY, FILTER HOUSE, P.O.
ALIPURDUAR JUNCTION, P.S. ALIPURDUAR, DIST. ALIPURDUAR, WEST
BENGAL-736123., REPRESENTED BY BAPAN DAS, S/O- MINTU DAS, R/O- N
0131, CHECHAKHATA, CHECHA KHATA (I PART), IN THE DISTRICT OF
ALIPURDUAR, WEST BENGAL-736123.

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE P.P., ASSAM

2:UNION OF INDIA
REPRESENTED BY SENIOR INTELLIGENCE OFFICER
DIRECTORATE OF REVENUE INTELLIGENCE

GUWAHATI ZONAL UNIT

GUWAHAT

Advocate for the Petitioner : MR. N N JHA

Advocate for the Respondent : PP, ASSAM

**BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI**

ORDER

Date : 06.05.2024

Heard Mr. N.N.Jha, learned counsel for the petitioner as well as Mr. R.R.Kaushik, learned Addl. P.P., Assam for the State respondent No.1. Also heard Dr.B.N.Gogoi, learned Standing Counsel, DRI/respondent No. 2.

By this petition under Section 439 Cr.P.C., the accused-petitioner, namely, **Mangal Das** has prayed for grant of bail in connection with **NDPS Case No.91/2018** pending in the court of learned Additional Sessions Judge, No. 1, Kamrup (M), Guwahati (arising out of DRI Case No.03/CL/ NDPS/GANJA/DRI/GZU/2018-19) under Sections 20(c)/29 of the NDPS Act.

The learned counsel for the petitioner submits that the petitioner has been languishing for last 6 years in judicial custody since he was arrested on 04.05.2018. He is the handyman of the truck bearing No.AS-01JC-4637 from which alleged contraband item was recovered. He was the helper of the driver and he is no way connected with the alleged offence. It is further submitted that out of 11 witnesses shown in the charge-sheet, for the last 6 years, only one witness was examined by the prosecution. It is settled law that delay in trial and prolong detention is infringement of personal liberty of a prson guaranteed under Article 21 of the Constitution of India. As such, learned counsel has prayed that considering length of detention, bail may be granted to the petitioner.

In support of his submission, learned counsel has cited the judgments rendered by the Hon'ble Supreme Court in the case of **Mohd. Muslim –vs- State (NCT of Delhi)** reported in AIR 2023 SC 164 and in the case of **Rabi Prakash –vs- State of Odisha** reported in 2023 O Supreme (SC) 707.

Learned Standing Counsel, DRI submits that due to death of one of the accused, there was delay in proceeding of the case.

I have perused the trial court record.

In the case of Rabi Prakash (supra), Hon'ble Supreme Court has held as follows:-

“.....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, first condition stands complied with. So far as the second 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 3 ½ 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 in Section 37 (1) (b) (ii) of

the NDPS Act.”

In the case in hand, it appears that the accused has been detained in custody for the last 6 years. Out of 11 witnesses only one witness was examined. From the trial court record, it reveals that one witness was examined in the year 2023. After that though case was fixed for evidence of the witnesses, but DRI has failed to produce any witness. The order sheets also show that trial court has not taken any such effective steps to dispose of the matter early.

In view of the aforesaid legal proposition as well as considering the lackadaisical attitude of the trial court, this court is inclined to grant bail to the petitioner.

Accordingly, it is provided that the petitioner named above shall be released on furnishing bail bond of **Rs. 1,00,000/-** (Rupees One Lac) with two sureties of like amount to the satisfaction of the learned **Additional Sessions Judge, No.1, Kamrup (M) Guwahati**, subject to the following conditions;-

- (i) The petitioner shall not leave the territorial jurisdiction of learned Additional Sessions Judge, No.1, without prior written permission from him/her;
- (ii) That the accused petitioner shall continue to appear before the learned trial Court on all dates to be fixed from time to time till the case is disposed of; and
- (iii) That the accused petitioner shall not directly or indirectly make any inducement, threat or promise to any of the prosecution witnesses; and
- (iv) That out of the two sureties, one must be a government servant of the State of Assam.

Violation of any condition shall tantamount to cancellation of bail.

This disposes of the bail application.

JUDGE

Comparing Assistant