

GAHC010277832023



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

Case No. : Bail Appln./4494/2023

RAHUL PRASAD
S/O LATE SARIJIT PRASAD
R/O VILL- JHAGRARPAPAR, WARD NO. 16 (RAIL GATE)
P.S. DHUBRI, IN THE DISTRICT OF DHUBRI, ASSAM

VERSUS

STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. K SARMA

Advocate for the Respondent : PP, ASSAM

B E F O R E
HON'BLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

06.02.2024

- 1.** Heard Mr. K. Sarma, learned Senior Counsel for the petitioner assisted by learned counsel Mr. S. Boruah. Also heard Mr. M.P. Goswami, learned Addl. PP, Assam.
- 2.** The petitioner namely, Rahul Prasad has filed this application under Section 439 Cr.PC with prayer for bail as he is behind bars since 18.08.2023 in connection with Special Case No.335/2023 arising out of Gauripur PS Case No. 323/2023 registered u/s 22(c) of the NDPS Act.

3. It is submitted on behalf of the petitioner that he is not named in the FIR. The FIR was lodged much earlier and subsequently the petitioner was arrested on behalf of the statement of the co-accused. A person cannot be incarcerated on the statement of the co-accused. After charge-sheet was submitted, charges were framed on 06.01.2024. The petitioner is in jail for 6 months. Many witnesses are enlisted. Further incarceration of the petitioner will lead to infringement of personal liberty.

4. On the contrary the learned Addl. PP has raised serious objection stating that this is not a case where investigation or trial has been procrastinated. Charge-sheet was laid recently and the next date is fixed for evidence on 01.02.2023. This case is at a preliminary stage of trial. It is submitted that on 14.08.2023 the FIR was lodged and the petitioner was forwarded to custody on 18.08.2023. The FIR unfolds that a tip off was received and investigation commenced. Following proper procedure investigation was conducted. From the house of accused Sofiquil Hussain @ Balu the police recovered -

- i. 4952 capsules of Pyeevon spas plus capsules;
- ii. 41 bottles of Codeine phosphate & Triprolidine HC Syrup;
- iii. 279 Nitcor tablets;
- iv. 100 Nitrozepam tablets.

5. It is further submitted by the learned Addl. PP that as charge-sheet has been laid, at this juncture it cannot be suspected that the petitioner has been roped in on the basis of the statement of the co-accused. Charges have been already been framed and now the innocence cannot be claimed without evidence as evidence of a single witness has not been recorded. The rigour of Section 37 of the NDPS Act acts as an embargo.

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

7. The learned counsel for the petitioner relied on the decision of Hon'ble the Supreme Court in **Sagar Tatyaram Gorkhe and Another v. State of**

Maharashtra and Sachin Maruti Mali @ Samar Shiva, reported in **(2021) 3 SCC 725** wherein it has been held and observed that :-

“3. The present applications/appeals for bail is on behalf of the accused Nos.8, 10 and 11. Out of a total of 15 accused, 4 accused are absconding and of the remaining 11 accused, 8 have been released on bail by different forums including one accused by this Court by its order dated 4th May, 2016.

4. The charges against the accused are, undoubtedly, serious. However, as observed in the earlier order of this Court dated 4th May, 2016 such charges will have to be balanced with certain other facts like the period of custody suffered and the likely period within which the trial can be expected to be completed. In our previous order dated 12th July, 2016 passed in the present matter the statement made on behalf of the State that the trial would be completed within a period of six months has been recorded. We are informed today that till date only one witness has been examined and that too his examination is also not over. The prosecution proposes to examine 147 witnesses. The accused appellants have been in custody close to four years.”

The appellants *Sagar Tatyaram Gorkhe* and *Sachin Maruti Mali @ Samar Shiva* (*supra*) were granted bail.

8. The ratio of decision in *Sagar Tatyaram Gorkhe’s* case is however not similar to this case. 147 witnesses were enlisted and only one person was examined in *Sagar Tatyaram Gorkhe’s* case (*supra*). In the instant case the petitioner is behind bars for only 6 months. Not a single witness has been examined. 13 witnesses are enlisted in this case. This is not a case which suggests procrastination of trial by the prosecution or by the Court, curtailing the right to personal liberty. The rigour of Section 37 of the NDPS Act also acts as an embargo. Trial has commenced in this case. The first date fixed for evidence is on 01.02.2024. Indeed this case is at a preliminary stage of trial. At this juncture there appears to be no justified ground to grant bail to the petitioner.

Petition stands rejected at this stage.

JUDGE

Comparing Assistant