

GAHC010283032023



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

Case No. : Bail Appln./4531/2023

TAJNUR ALI AND ANR
S/O KHALEK R/O YASHIHATIPARA P..S HOWLY SUB DIV BERPITA DIST.
BARPETA ASSAM

2: A SALAM
S/O NASHER VILL. BANGHUGI P.S. KALGACHIA SUB DIV BARPETA DIST.
BARPETA ASSA

VERSUS

UNION OF INDIA
REP BY THE SC, NARCOTICS CONTROL BUREAU

Advocate for the Petitioner : MR G SAIKIA

Advocate for the Respondent : SC, NCB

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

26.02.2024

- 1.** Heard Mr. G. Saikia, learned counsel for the petitioners and Mr. S.C. Keyal, learned Standing Counsel for NCB.
- 2.** The petitioners namely, [1] Tajnur Ali and [2] A. Salam have filed this application under Section 439 Cr.PC with prayer for bail as they are behind bars since 09.06.2020 in connection with NDPS Case No. 107/2020 arising out of NCB Crime No. 9/2020

registered u/s 22(c)/27(a) of the NDPS Act, 1985.

3. It is submitted that the petitioner's right to personal liberty has been curtailed as they are languishing in the jail for more than 3 years 8 months. 2 out of only 10 witnesses have been examined. The cross-examination of the witnesses have been procrastinated by the prosecution that the PW-1 was not present for cross-examination on several dates. PW-1 failed to appear for the fourth consecutive time. 13 adjournments were taken by PW-1 for cross-examination. The petitioner's right to personal liberty has thus being infringed by the prosecution. Moreover the embargo u/s 37 of the NDPS Act is not applicable in this case as this case will not entail conviction. The seizure and sampling was not properly complied with. The petitioners will be highly prejudiced as they deserve acquittal in connection with this case.

4. On the contrary the learned Standing Counsel for the NCB has raised serious objection against the bail petition stating that at this stage it cannot be ascertained that the trial will not entail conviction. The merits of the case cannot be scrutinised in connection with a petition with prayer for bail. A mini trial cannot be held at this stage and it cannot be held that it is unlikely that trial would be concluded in the near future. The gravity of the offence cannot be ignored. Overwhelming evidence has been adduced by the prosecution witnesses.

5. In reply to the judgment referred to by the learned counsel for the petitioners in the case of ***Mudmmad Muslim @ Hussain v. State (NCT of Delhi) 2012 Life Law SC 260*** the learned Standing Counsel has relied on the decision of the Hon'ble Supreme Court in ***Tarun Kumar v. Assistant Director, Directorate of Enforcement, (2023) 4 Crimes (SC) 442*** wherein it has been held and observed 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 order has been passed by a user repeating or multiplying the same irregularity of illegality or for passing similar wrong order. Article 14 is not meant to perpetuate the illegality of irregularity. If there has been a benefit or advantage conferred on one or a set of people any authority or by the court, without legal basis or justification, other persons could not claim as a matter or right the benefit on the basis of such wrong decision. “

6. I have considered the submissions at the Bar with circumspection. The allegation against the petitioner is that on 09.06.2020, on a tip off investigation was carried on following proper procedure. During investigation it was observed that one person reached the service lane Beharbari, near Indian Oil Petrol Pump, N.H. 37 at around 16:30 hours on a scooty bearing Registration No. 25K1355. A person alighted from the scooty and was seen waiting near his scooty. He was carrying a white coloured bag. After sometime a Maruti Alto bearing Registration No. AS19 G 4810 arrived at the place and stopped near the person standing near the scooty. There were two persons inside the Maruti Alto car and one person came out and the person who was standing near the scooty handed the white coloured carry bag. Meanwhile the other person also came up from the vehicle and another packet was handed by the person standing near the scooty. The NCB team encircled all the persons dealing with the packets. When confronted it was disclosed by the present petitioners that the packets contained Methamphetamine tablets. The present petitioners were amongst the three dealing with the packets containing Methamphetamine tablets. When weighed it was found that 190 kgs of Methamphetamine tablets were being exchanged by the petitioners along with the third person. The NCB team immediately arrested the petitioners and forwarded them to custody and since then the petitioners have been behind bars.

7. It is true that trial has been procrastinated by the prosecution but considering the protraction of trial by the prosecution, bail cannot be granted at this juncture. It

cannot be ignored that the petitioners are behind bars for 4 years and prosecution has been slow in concluding the trial. The decision of the Hon'ble Supreme Court in *Muhammad Muslim's* case (*supra*) is not applicable to this case. The appellant *Muhammad Muslim* was behind bars for more than 7 years and 34 enlisted witnesses were yet to be examined when the appellant was granted bail. Moreover the contraband was not recovered from the possession of the appellant Muhammad Muslim.

In the instant case 2 witnesses out of enlisted 10 witnesses have been already examined. The allegation is of a serious nature.

8. In view of my foregoing discussions at this juncture petition for prayer for bail is rejected. However, the petitioners are at liberty to apply for bail subsequently if prosecution will be delayed any further. The trial Court is also directed to expedite the trial for the speedy disposal of the case.

JUDGE

Comparing Assistant