

GAHC010291322023



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

Case No. : Bail Appln./4660/2023

MD MUSARAF
S/O LATE AZID KHAN
R/O VILL- GOMHOU
P.S.LILONG
DIST. THOUBAL, MANIPUR

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MS. S K NARGIS

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

ORDER

Date : 12-06-2024

Heard Ms. S.K. Nargis, learned counsel for the petitioner Md. Musaraf. Also heard Mr. B.B. Gogoi, learned Additional Public Prosecutor, Assam for the respondent State.

2. The petitioner has filed this application under Section 439 of the Code of Criminal Procedure, 1973 with a prayer for bail as he is behind bars since 21.06.2022 in connection with NDPS Case No. 203/2022 arising out of Panbazar Police Station Case No. 163/2022 under Section 21(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (the NDPS Act for short).

3. It is submitted on behalf of the petitioner that he is behind bars for almost 2 (Two) years and so far, only one witness has been examined. 13 (Thirteen) witnesses have been enlisted in the charge sheet as prosecution witnesses and only 1 (One) witness has been examined. For one year, not a single witness has been examined. It is further submitted that immediately after 10 (Ten) days of his marriage, the petitioner was taken into custody. Charge was framed on 15.12.2022 and PW.1 was examined on 17.05.2023. The other co-accused has been enlarged on bail, as the co-accused was suffering from tuberculosis.

4. The petitioner has relied on the decision of the Hon'ble Supreme Court in *Mohd. Muslim Vs. State (NCT of Delhi)* reported in MANU/SC/0320/2023 wherein the appellant was enlarged on bail after it was observed that:

“21. Before parting, it would be important to reflect that laws which impose stringent conditions for grant of bail, may be necessary in public interest; yet, if trials are not concluded in time, the injustice wrecked on the individual is immeasurable. Jails are overcrowded and their living conditions, more often than not, appalling. According to the Union Home Ministry's response to Parliament, the National Crime Records Bureau had

recorded that as on 31st December 2021, over 5,54,034 prisoners were lodged in jails against total capacity of 4,25,069 lakhs in the country. Of these 122,852 were convicts; the rest 4,27,165 were under trials.”

5. The petitioner has also relied on the decision of the Hon'ble Supreme Court in *Rabi Prakash Vs. The State of Odisha in Special Leave to Appeal (Crl.) No. 4169/2023* decided on 13.07.2023 wherein it has been held and observed

that:

“4. 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, the 1st condition stands complied with. So far as the 2nd 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 three and a half 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 under Section 37(1)(b)(ii) of the NDPS Act.”

6. The learned Additional Public Prosecutor has raised serious objection stating that charges have been framed under Section 21(c) of the NDPS Act as a prima facie case has been found against him.

7. To consider that the petitioner is not guilty, to conflict the embargo under Section 37 of the NDPS Act, at least evidence of some witnesses has to be recorded. Here, on the basis of evidence of only one witness, this case against the petitioner cannot be written off.

8. I have considered the submissions at the bar with circumspection.

9. The FIR unfolds that on 21.06.2022, a tip off was received that a huge consignment of contraband was transported, inter-state and was arriving from Jorabat. A naka checking was conducted near Handique Girls College and two vehicles were intercepted. One vehicle was a black coloured Scorpio bearing registration No. AS01DV1033 and the other was a Tata Harrier, black colour, without any registration number. The Tata Harrier was driven by Md. Safique. 14 (Fourteen) packets were recovered from the vehicle. 26,600 (Twenty Six Thousand Six Hundred) yaba tablets were found inside those packets which were concealed in the artificial deck below the mat of the dickey of the car. The

present petitioner and Md. Irfan Khan were apprehended from the same vehicle. It is true that the present petitioner has been behind bars for a considerable period of time and trial is dragging on, with a laden feet.

10. In the case of Md. Muslim (supra), the appellant Md. Muslim was granted bail because he was behind bars for 8 (Eight) years and 30 (Thirty) witnesses had been examined whereas 34 (Thirty Four) witnesses were to be examined. In the case of Rabi Prakash (supra), the appellant was released on bail because he was behind bars for 3 ½ years (Three and a half years) and only 1 (One) witness out of 19 (Nineteen) witnesses were examined at that time.

11. In the instant case, it cannot be held at this juncture that the petitioner's personal liberty under Article 21 of the Constitution of India has been curtailed. However, further delay may result in procrastination of trial by the prosecution. At this juncture, the rigour under Section 37 of the NDPS Act, restricts the bail petition and I am constrained to reject the bail petition. The petitioner is at liberty to apply for bail if trial is procrastinated any further.

12. The learned Trial Court is hereby directed to expedite the trial for speedy disposal of this case.

13. In the above terms this Bail Applications stands disposed of.

JUDGE

Comparing Assistant