

GAHC010291392023



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

Case No. : Bail Appln./4633/2023

BIKRAM DEBBARMA
S/O LATE BISWA CHANDRA DEBBARMA, R/O WARD NO. 3, VILL-
MAIKHARPARA, P.O. AND P.S. LEFUNGA, DIST. WEST TRIPURA, TRIURA-
799211

VERSUS

UNION OF INDIA
REP. BY THE INTELLIGENCE OFFICER, NARCOTICS CONTROL BUREAU,
GUWAHATI ZONAL UNIT, GUWAHATI, ASSAM

Advocate for the Petitioner : MR. DITUL DAS

Advocate for the Respondent : SC, NCB

BEFORE
HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

ORDER

Date : 20-02-2024

Heard Mr. D. Das, learned counsel for the petitioner Bikram Debbarma.

2. The petitioner has filed this application under Section 439 of the Code of Criminal Procedure, 1973 (CrPC for short) with prayer for bail as he is behind bars since 22.07.2021 in connection NDPS Case No. 05/2022 arising out of NCB

Crime No. 17/2021 under Sections 20(b)(ii)(C) and 29 of the NDPS Act.

3. It is submitted on behalf of the petitioner that the main accused Mujammil Hussain on his statement implicated the present accused and four accused were arrested. The co-accused have been granted bail. The petitioner cannot be held liable on the statement of the main accused. Thus the petitioner deserves bail.

4. Mr. S.C. Keyal, learned Standing Counsel has submitted that the ground of parity cannot be considered in grave offence like the present case. 2 (Two) witnesses have already been examined. It cannot be said that the petitioner's personal liberty has been curtailed. The trial was delayed due to the absence of other accused and finally the case was split up. It has also been held by Hon'ble the Supreme Court that delay cannot be considered to be a ground to grant bail for serious offence.

5. I have considered the submissions at the bar with circumspection. I have also perused the LCR. It is true that the petitioner was arrested on 22.07.2021. He is behind bars for more than two years. There is indeed procrastination of trial but at this juncture it cannot be held that the petitioner's right to personal liberty has been curtailed.

6. The petitioner has relied on the decision of Hon'ble the Supreme Court in *Rabi Prakash Vs. State of Odhisha in Special Leave to Appeal (Criminal) Petition NO. 4169/2023* wherein vide order dated 13.07.2023, the appellant Rabi Prakash was granted bail as he was behind bars for more than three and a half years and only one witness was examined. This instant case is however not similar to the case of Rabi Prakash (supra). It has been held by Hon'ble the Supreme Court *Tarun Kumar Vs. Assistant Director Directorate of Enforcement in SLP (Crl.) No. 9431/2023* wherein it has been held that parity cannot be

considered to be a ground to grant bail and erroneous orders are not required to be followed. It has been 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 and 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 illegality or for passing similar wrong order. Article 14 is not meant to perpetuate the illegality or irregularity. If there has been a benefit or advantage conferred on one or a set of people by any authority or by the court, without legal basis or justification, other persons could not claim as a matter of right the benefit on the basis of such wrong decision.”

7. 2 (Two) witnesses have already been examined in connection with this case. At this juncture the rigour of Section 37 of the NDPS Act cannot be ignored. I am not inclined to grant bail to the petitioner at this stage.

8. The petition with prayer for bail is rejected.

9. However, the petitioner may file a subsequent bail application if trial is procrastinated any further and the Court may grant bail as per merits of the case. The trial Court is also directed to expedite the case for speedy disposal of the case.

Petition with prayer for bail stands rejected.

In the above terms this Bail Application stands disposed of.

JUDGE