

GAHC010295582023



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

Case No. : Bail Appln./344/2024

LOKIVI ACHUMI
SO LT. KIYELU ACHUMI
PERMANENT RESIDENT OF AWOTSKILIMI VILLAGE,
P.S. ATOIZU
DIST. ZUNHEBOTO, NAGALAND,
PIN NO. 798620

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. N K MURRY

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN
ORDER

26.02.2024.

Heard Mr. N.K. Murry, learned counsel for the accused. Also heard Mr. B. Sharma, learned Addl. P.P. for the State respondent.

2. This application, under Section 439 of the Code of Criminal Procedure, 1973, is preferred by accused, namely, **Lokivi Achumi**, who has been languishing in jail hazoot since 11.03.2023, in connection with **Special NDPS Case No. 34/2023**,

under Sections 20(C)/29 of the NDPS Act, pending before the learned Special Judge, NDPS, Karbi Anglong, Diphu for grant of bail.

3. It is to be noted here that the aforementioned case has been registered on the basis of an FIR lodged by one S.I. Swmdwn Swargiary of Khatkhathi P.S. on 11.03.2023.

4. The essence of allegations, made in the said complaint, dated 11.03.2023, is that acting on a tip off on 11.03.2023, at about 06:20 am, he, along with other staff, have intercepted one Maruti Suzuki Alto vehicle, bearing registration No. NL07-2128, in front of SBI Khatkhathi Branch, which was coming from Dimapur side towards Bokajan and apprehended one accused namely, Lokivi Achumi. And during search, they have recovered Total 430 numbers of Sampex⁺ capsules in two black colored polythene bag, weighing 265.82 grams and total 375 numbers of empty Sampex⁺ Capsules, containing in seven numbers of small size polythene packets and total 110 numbers of Nitrosun 10 tablets and 6.89 grams of powdery substance, suspected to be psychotropic substance and seized the same in presence of witnesses, preparing seizure list. And during interrogation he discloses that he brought the same from Dimapur for selling it to the owner of Rohit Pan Shop, namely, Shri Rajendra Sahu, located at Sukhanjan Tiniali.

5. Mr. Murry, learned counsel for the accused, submits that the accused is languishing in jail hazoot since 11.03.2023. Mr. Murry further submits that the case has already been charge sheeted, and only one witness has been examined so far after framing of charge, out of seven witnesses cited in the charge sheet. It is the further submission of Mr. Murry that the trial has been considerably delayed and since framing of charge only one witness has been examined so far and six more witnesses remained to be examined. Therefore, Mr. Murry has contended to allow this petition. Mr. Murry has referred one decision of Hon'ble Supreme Court in **Mohd Muslim @**

Hussain vs. State (NCT of Delhi) Criminal Appeal No(S). of 2023 @ Special Leave petition (Crl.) No(S). 915 of 2023, in support of his submission.

6. On the other hand, Mr. B. Sharma, learned Addl. P.P. submits that Total 430 numbers of Sampex⁺ capsules, weighing 265.82 grams and Total 375 numbers of empty Sampex⁺ Capsules and Total 110 numbers of Nitrosun 10 tablets and 6.89 grams of powdery substance, suspected to be psychotropic substance, were recovered from the possession of the accused person while the same were being carried in the Maruti Alto car by the accused, and that the same are of commercial quantity, and that the accused has failed to satisfy the twin requirement of section 37 of the NDPS Act, and that trial is going on and one witness has already been examined. Mr. Sharma also submits that there is no considerable delay in the trial and therefore, Mr. Sharma has contended to dismiss the petition.

7. Having heard the submissions of learned Advocates of both sides, I have carefully gone through the petition and the documents placed on record and also perused the scanned copy of the case record, and also the Status Report, received from the learned Court below.

8. It also appears that the learned court below had framed charge against the present accused and another co-accused on 01.09.2023, under section 22(C)/29 NDPS Act and since then the court below has examined one witness out of seven witnesses cited in the charge sheet.

9. It is not in dispute that the quantity of the contraband substances, so recovered from the possession of the accused person, are of commercial quantity, and as such the accused has to satisfy the twin condition of Section 37 of the NDPS Act, that there is no reasonable ground to believe that: the accused is not guilty of the offence and that he is not likely to commit any offence while on bail.

10. But, from the materials on record, specially from the scanned copy of the record received from the learned court below and also from the submission of learned counsel for the accused, this Court is unable to derive its satisfaction that there exists any reasonable ground for believing that the accused is not guilty of the offence and that he is not likely to commit any offence, while on bail.

11. It is also to be mentioned here that in the case of **Union Of India vs. Ajay Kumar Singh @ Pappu**, Criminal Appeal No. 952 OF 2023 [Arising out of SLP (CRL.) No.2351 OF 2023], decided on 28 March, 2023, Hon'ble Supreme Court, while setting aside the order of granting bail, by the Allahabad High Court, to the accused involving in commercial quantity of contraband substance, has held as under:-

"In view of the above provisions, it is implicit that no person accused of an offence involving trade in commercial quantity of narcotics is liable to be released on bail unless the court is satisfied that there are reasonable grounds for believing that he is not guilty of such an offence and that he is not likely to commit any offence while on bail."

12. Same principle is echoed by another bench of co-equal strength of Hon'ble Supreme Court in the case of **NCB vs. Mohit Aggarwal** {Criminal Appeal Nos. 1001-1002 of 2022, arising out of petitions for Special Leave to Appeal (Crl.) No. 6128-29 of 2021, decided on 19 July, 2022}.

13. In the case of **Mohd Muslim @ Hussain** (supra), so referred by Mr. Murry, the learned counsel for the accused, Hon'ble Supreme Court, referring to its decision in **Satender Kumar Antil vs. Central Bureau of Investigation** reported in **(2022) 10 SCC 51**, and analyzing the provision of section 37 of the NDPS Act, has held that :-- "*Grant of bail on ground of undue delay in trial, cannot be said to be fettered by [Section 37](#) of the Act, given the imperative of Section 436A which is applicable to offences under the [NDPS Act](#) too.*" Thereafter, considering the more than seven and half years of detention of the accused in said case and also considering

section 436-A Cr.P.C. directed the accused to be released on bail.

14. Thus, what is transpired from the ratio laid down in the case of **Mohd Muslim @ Hussain** (supra) is that to overcome the embargo under section 37 of the NDPS Act, one has to establish that there is undue delay in trial. But, here in this case, the learned counsel for the accused has failed to establish the same from the record of the learned court below. As discussed herein above charge was framed against the accused on 01.09.2023. Thereafter, the learned court below has examined one witness. And now the case is pending for further evidence. Having gone through the status report submitted by the learned court below and also going through the scanned copy of the record received from the learned court below, and also considering the pace of trial, this court is left unimpressed by the submission of Mr. Murry that there is no undue delay of trial here in this case. Therefore, the decision in **Mohd Muslim @ Hussain** (supra) would not come into aid of the accused advance in the argument of Mr. Murry.

15. In view of above, and also in view of the nature and gravity of the offence and the punishment prescribed for the same, this Court is of the opinion that this is not a fit case to grant the privilege of bail, under Section 439 of the Cr.P.C., to the accused and therefore, the same stands **dismissed**.

16. However, the learned Court below is directed to expedite the trial and conclude the same at an earliest possible date, without being influenced by any of the observations made by this court herein above. And if necessary, the learned court below shall take recourse to the provision of Section 309(1) of the Cr.P.C.

17. In terms of above, the bail application stands disposed of.

JUDGE

Comparing Assistant