

GAHC010044202024



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

Case No. : Bail Appln./634/2024

ABDUL JALIL
S/O- LT. NUR UDDIN, VILL- DURLABPUR, P.S. PATHERKANDI, DIST.-
KARIMGANJ, ASSAM

VERSUS

THE STATE OF ASSAM
REP BY THE PP, ASSAM

Advocate for the Petitioner : MR. M A CHOUDHURY

Advocate for the Respondent : PP, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA**

ORDER

Date : 08.04.2024

- 1)** Heard Mr. M. A. Choudhury, learned counsel for the petitioner. Also heard Mr. B. Sharma, learned Additional Public Prosecutor for the State respondent.
- 2)** This application under section 439 of the Code of Criminal Procedure comma 1973 has been filed by the petitioner, namely, Abdul Jalil who has been

detained behind the bars since 14.08.2022 (for last 1 year 7 month and 21 days) in connection with Special (NDPS) Case No. 119/2022 corresponding to Patharkandi NDPS Case No. 205/2022 under Section 22(c)/25/29 of the NDPS Act, 1985.

3) It is pertinent to mention herein that this is for the third time the petitioner has approached this Court for seeking bail. His earlier two applications wherein he had prayed for grant of default statutory bail were rejected by this court holding that the present petitioner is not entitled to get default statutory bail.

4) In the instant case, the petitioner has prayed for bail on the ground of long incarceration as he has been detained behind the bars since 14.08.2022.

5) The gist of accusation in this case is that on the basis of an FIR lodged by one R. P. Singh, SI of Patharkandi Police Station, on 13.08.2022, *inter-alia*, alleging that commercial quantity of suspected yaba tablet were recovered from the possession of the present petitioner, Patharkandi P. S. case No. 205/2022 was registered and investigation was initiated.

6) Ultimately on completion of the investigation charge-sheet was laid against the present petitioner under Section 22(c) of the NDPS Act, 1985.

7) The main submission of learned counsel for the petitioner is that the petitioner has been detained behind the bars for last more than 1 year 7 months and till today only two witnesses have been examined by the prosecution side.

8) It is also submitted by learned counsel for the petitioner that both the witnesses who were examined by the prosecution side have become hostile against the prosecution and they have not deposed anything incriminating against the present petitioner.

9) Learned counsel for the petitioner has submitted that in spite of long

incarceration of more than 1 year 7 months, the trial has not progressed and both the witnesses who have deposed till date have become hostile, hence on the sole ground of prolonged incarceration the petitioner is entitled to get bail.

10) In support of his submission, learned counsel for the petitioner has cited the ruling of Apex Court of India in the case of ***Rabi Prakash Vs. State of Orissa***" reported in ***2023 Live Law (SC) 533***, as well as the case of "***Chitta Biswas @ Subhas Vs. The State of West Bengal***"(Criminal Appeal No. 245/2020, Order dated 07.02.2020), "***Nitesh Adhikari @ Bapan Vs. State of West Bengal***" (Order dated 01.08.2022 in SLP Criminal No. 5769/2022), "***Shariful Islam @ Sarif Vs. State of West Bengal***" (order dated 04.08.2022 in SLP Criminal No. 4173/2022), "***Karanail Singh vs The State Of Odisha***"Criminal Appeal No.2027 of 2022 arising out of SLP Criminal No. 9067/2022 order dated 22.11.2022 and "***Anjan Nath Vs. The State of Assam*** [Order dated 17.10.2023 passed in Special Leave to Appeal (Criminal) No. 9860/2023].

11) Learned counsel for the petitioner has submitted that in all the above cited cases the petitioners were granted bail due to prolong incarceration of above one and a half years in each case, and hence t is prayed that the petitioner may also be allowed to go bail on the ground of prolong incarceration.

12) On the other hand, Mr. B. Sarma, learned Additional Public Prosecutor has submitted that the perusal of the scanned copy of the case records may be required for consideration of the submission of learned counsel for the petitioner.

13) It is submitted by learned Additional Public Prosecutor that mere long incarceration would not entitle the petitioner to bail as the contraband involved in this case is of commercial quantity and the embargo of Section 37 of the

NDPS Act, 1985 is applicable to this case.

14) I have considered the submissions made by learned counsel for both the sites and have perused the materials available on record.

15) By order dated 18.03.2024, a status report of the witnesses examined in Special (NDPS) Case No. 119/2022 was called for from the Court of learned Special Judge, Karimganj and in pursuant to the directions, the learned Special Judge, Karimganj has submitted a status report. On perusal of the said report, it appears that presently only 02 prosecution witnesses have been examined by the prosecution side. The photocopy of the deposition of the said witnesses have been furnished by the learned Special Judge, Karimganj.

16) On perusal of the photocopies of the deposition of 02 witnesses who are already examined, it appears that both the witnesses have turned hostile and have not deposed anything incriminating against the present petitioner.

17) It also appears that the petitioner was arrested on 14.08.2022 and he has been detained behind the bars for more than 1 year 7 months.

18) The Supreme Court of India in “***Mohd Muslim @ Hussain Vs. State (NCT of Delhi)***” reported in “***2023 SCC Online SC 352***” has observed that “Grant of bail on ground of undue delay in trial, cannot be said to be fettered by Section 37 of the NDPS Act, 1985”.

19) Similarly, the Apex Court of India has also observed in “***Rabi Prakash Vs. The State of Odisha***” (**Supra**) wherein, it observed that “prolonged incarceration, generally militates against the most precious fundamental right guaranteed under Article 21 of the Constitution of India and in such a situation, the conditional liberty must override the statutory embargo created under Section 37(1)(b)(ii) of the NDPS Act, 1985.”

20) This court is also of the considered opinion that while considering an

application for bail involving commercial quantity of contraband, if the court comes to a finding that there has been undue delay in completion of the trial and that there has been prolonged incarceration of the petitioner during this time, he would be entitled to get bail in such case of prolonged incarceration as the fundamental right to life and personal liberty guaranteed under Article 21 of the Constitution of India would outweigh the fetters imposed under Section 37 of the NDPS Act, 1985.

21) It is also pertinent to mention herein that the Supreme Court of India had granted bail to the accused facing charges for possession of commercial quantity of contraband only on the ground of prolonged incarceration in "***Shariful Islam @ Sarif Vs. State of West Bengal***" (**Supra**), wherein the accused was detained behind the bars for one year and six months.

22) In "***Nitesh Adhikari Vs. State of West Bengal***" (**Supra**), the Apex Court granted bail to the accused facing accusation under Section 21(c) of the NDPS Act, 1985 on the ground of incarceration of one year seven months.

23) In the instant case also, the petitioner has been detained behind the bars for more than 1 year 7 months and only 2 witnesses have been examined by the prosecution side and both the witnesses have not deposed anything incriminating against the present petitioner.

24) Under the facts and circumstances of this case, considering the prolonged incarceration of the petitioner as well as slow progress of the trial, this court is of the considered opinion that the fundamental right to life and personal liberty of the petitioner guaranteed under Article 21 of the Constitution of India would outweigh the fetters imposed under Section 37 of the NDPS Act, 1985 and accordingly the petitioner is entitled to get bail in this case.

25) In view of above, the above-named petitioner is hereby directed to be

released on bail on furnishing a bond of Rs. 50,000/- (Rupees Fifty Thousand only) with two suitable sureties, one of whom should be a government employee and should be resident of the State of Assam, of like amount to the satisfaction of the learned Trial Court with conditions:-

- i. That the petitioner shall cooperate in the trial of Special (NDPS) Case No. 119/2022, which is pending in the Court of learned Special Judge, Karimganj;
- ii. That the petitioner shall regularly appear before the trial court as and when so required by the trial court;
- iii. That the petitioner shall not directly or indirectly make any inducement, threat, or promise to any person who may be acquainted with the facts of the case, so as to dissuade such person from disclosing such facts before the trial court in the trial pending against the present petitioner;
- iv. That the petitioner shall provide his contact details including photocopies of his Aadhar Card, Driving License, PAN card, mobile number, and other contact details before the Court of the learned Special Judge, Karimganj;
- v. That the petitioner shall not leave the jurisdiction of the learned Trial Court without prior permission of the trial court and when such leave is granted by the trial court, the petitioner shall submit his leave address and contact details during such leave before the trial court.

26) With the above observations, this bail application is hereby disposed of.

JUDGE

Comparing Assistant