

GAHC010039902024



2024:GAU-AS:12193

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

**Case No. : Bail Appln./603/2024**

ABDUL HAMID  
SON OF MAULANA KAMAL UDDIN, R/O- VILL. RUPARGOOL, P.O.  
SINGARIA BAZER, P.S. NILAMBAZAR, DIST- HAILAKANDI, ASSAM, PIN-  
788719

VERSUS

THE STATE OF ASSAM  
REPRESENTED BY P.P., ASSAM

**Advocate for the Petitioner** : MR S DUTTA, MS S MOCHAHARI, MR. S DUTTA

**Advocate for the Respondent** : PP, ASSAM,

**BEFORE**  
**HON'BLE MRS. JUSTICE SUSMITA PHUKAN KHAUND**  
**ORDER**

**03.12.2024**

Heard Mr S Dutta, learned counsel for the petitioner, Abdul Hamid, who has filed this application under Section 439 of the Code of Criminal Procedure, 1973, with prayer for bail, as he is behind bars since 07.06.2023, in connection with Special NDPS Case No. 59/2023, arising out of Nilambazar PS Case No. 111 of 2023, under Section 21(C)/25/29 of the NDPS Act, 1985.

3. Heard Mr K Baishya, learned Additional Public Prosecutor for the State of Assam.
4. It is submitted on behalf of the petitioner that he was arrested on 07.06.2023. Charge sheet was submitted on 07.09.2023 and finally, charge was framed on 19.12.2023. The petitioner's right to personal liberty has been infringed as not a single witness has been examined so far.
5. Learned Additional Public Prosecutor has raised serious objection stating that this case cannot be considered to be a case of prolonged incarceration. The rigours of Section 37 of the NDPS Act fetter the bail application.
6. The FIR unfolds that on 07.06.2023, an information was received that a white coloured S-Presso Car, bearing Registration No. AS-10F2966, was carrying huge quantity of contraband from Lalpul to Nilambazar. An investigating team was formed and naka-checking was held. At around 10:00 am, the aforementioned vehicle approaching from Lalpul towards Nilambazar was detained in front of Nilambazar Police Station and the occupants, including the present petitioner was found inside the vehicle. The petitioner admitted that there were drugs in the vehicle. 300 grams of heroin was found inside the vehicle.
7. Learned counsel for the petitioner has relied on the decision of this Court in *Ahmed Hussain @ Ahmod Hussain –Vs- The State of Assam*, in connection with Bail Application No. 44/2024, wherein vide order dated 21.06.2024, a coordinate Bench of this Court granted bail to a similarly circumstanced petitioner. It was held by the learned

Court that-

***“23. In the instant case also, the present petitioner has been detained behind the bars for more than 1 years 7 months and not even a single witness has been examined till now. Under such circumstances and in view of the observation of the Apex Court in the various rulings cited hereinabove, this Court is of the considered opinion that under the facts and circumstances of this case and the period of detention undergone by the present petitioner is long enough to outweigh the embargo of Section 37 of the NDPS, Act 1985 and the petitioner is therefore, entitled to get bail on the ground of prolonged incarceration.”***

8. It is further submitted that after weighing the contraband, the total weight turned out to be only 15 grams above the intermediate quantity and thus, the petitioner has been immensely suffering as he has been incarcerated in connection with a higher offence.

9. I have considered the facts and circumstances of this case.

10. I have considered the submissions at the Bar with circumspection.

11. In the case of *Ahmed Hussain @ Ahmod Hussain*, a coordinate Bench of this Court has not decided this case on merits. A bail order was passed considering the peculiar facts and circumstances of the case. It has to be borne in mind that the double pronged condition of Section 37 of the NDPS Act, acts as an embargo.

12. It is true that trial has been procrastinated by the Court as well as by the prosecution, but at the same time, it cannot be conclusively held that the petitioner's right to personal liberty has been infringed, at this juncture. I am constrained to hold that

the petitioner is not entitled to bail at this stage, considering the embargo under Section 37 of the NDPS Act.

13. Petition stands rejected at this stage. However, the petitioner can subsequently apply for bail, if trial is further procrastinated by the prosecution as well as by the trial Court. The trial Court is directed to expedite the trial for speedy disposal of this case by adopting appropriate measures.

**JUDGE**

**Comparing Assistant**