

GAHC010024672024



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

Case No. : Bail Appln./377/2024

ABDUL GAFFAR @ ASHOBA
S/O LATE ABDUL LATIF,
VILL- KOPTA, P.O - MOIRANG P.S- MOIRANG DIST-BISHNUPUR, MANIPUR

VERSUS

THE STATE OF ASSAM
REPRESENTED BY PP ASSAM

Advocate for the Petitioner : MOTIUR RAHMAN

Advocate for the Respondent : PP, ASSAM

BEFORE
HON'BLE MR. JUSTICE ROBIN PHUKAN
ORDER

04.03.2024.

Heard Mr. M. Rahman, learned counsel for the accused. Also heard Mr. R.J. Baruah, 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, Abdul Gaffar @ Ashoba, who has been languishing in jail hazoot since 15.02.2022, in connection with Special NDPS Case No. 134/2022, under Sections 21(c)/22(C)/29 of the NDPS Act, pending before the learned Addl. Sessions Judge, No.3 (FTC) Kamrup (M), Guwahati, 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 Jisu Janakya Gogoi of Jorabat Out Post on 14.02.2022.

4. The essence of allegations, made in the said FIR is that acting on a tip off on 14.02.2022, at about 04.00 pm, he along with other staff, have intercepted one Truck, bearing registration No. AS01 EC 7829, in front of Jorabat Out Post and on checking the said Truck he had recovered 475.1 grams of Heroin, in 38 soap boxes, and also recovered 30,000 YABA Tablets, which were being concealed in a blue coloured plastic Tripal in the body of the Truck and seized the same in presence of witnesses by preparing seizure list and also apprehended driver of the vehicle, namely, Abdul Goffar @ Asoba and handyman Remas Khan.

5. Mr. Rahman, learned counsel for the accused, submits that the accused are behind the bar for last 742 days, as he was arrested on 15.02.2022. Mr. Rahman further submits that the case has already been charge sheeted, and the learned court below had framed charge against the accused under Sections 21(c)/22(c)/29 of the NDPS Act, on 06.02.2023 and till date not a single witness could be examined. Mr. Rahman, referring to a decision of Hon'ble Supreme Court in (i) **Rabi Prakash vs. The State of Odisha (Special Leave of Appeal (Crl.) No. 4169/2023, dated 13.07.2023)** and (ii) **MOHD MUSLIM @ HUSSAIN VS. STATE (NCT OF DELHI) Criminal Appeal No(s)**

of 2023[Special Leave Petition (CRL) No.915 of 2023], further submits that though the quantity of contraband substances allegedly recovered from the car were of commercial quantity, yet, the conditional liberty available under Article 21 of the Constitution of India, must override the statutory embargo created under section 37 of the NDPS Act. Mr. Rahman also submits that the accused is ready to face trial and will appear before the court on each and every date and therefore, it is contended to allow the petition.

6. On the other hand, Mr. R.J. Baruah, the learned Addl. P.P. submits that 30,000 YABA Tablets and 475.1 grams of Heroin, were recovered from the possession of the accused person while the same were being carried in a Truck, bearing registration No. AS01 EC 7829, and that the same were of commercial quantity and the accused has failed to fulfill the twin requirement of section 37 of the NDPS Act, and that there is no considerable delay in trial and therefore, Mr. Baruah 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 appears that the accused was arrested on 15.02.2022, and since then he has been languishing in jail hazoot. Further, it appears that the learned court below had framed charge against the accused persons under sections 21(c)/22(C)/29 of the NDPS Act, on 06.02.2023. But, till date the learned court below could not examine a single witness.

9. It is also not in dispute that the quantity of the contraband substances, so recovered from the possession of the accused persons are of commercial

quantity, and as such the accused has to satisfy the twin conditions 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. Though the learned counsel for the accused submits that there is delay in trial and that the accused is languishing in jail hazoot for last 742 days, the conditional liberty available under Article 21 of the Constitution of India, must override the statutory embargo created under section 37 of the NDPS Act, yet such a submission left this court unimpressed in as much as the scanned copy of the record of learned court below never indicates that there is considerable delay in trial so as to contend that the right to speedy trial of the accused has been violated. It is a fact that since framing of charge on 06.02.2023, till date not a single witness has been examined but, having gone through the record of the learned court below it cannot be said that there is lapse on the part of the court as it appears that there was invariably an order for issuing summon to the witnesses.

12. I have also gone through the decision of Hon'ble Supreme Court in **Ravi Prakash** (supra) and **Mohd Muslim** (supra) so referred by Mr. Rahman, the learned counsel for the accused and I find that the facts and circumstances of the said cases are quite different from the case in hand. In the said cases

Hon'ble Supreme Court has held that prolong incarceration, generally militate against the most precious fundamental right guaranteed under Article 21 of the Constitution and in such situation, the conditional liberty must override the statutory embargo, created under section 37(1) (b) (ii) of the NDPS Act. As in the case in hand, there appears to be no considerable delay in trial so as to term the litigation protracted, and on such count, this court is of the considered opinion that the proposition of law, laid down in the case of **Ravi Prakash** (supra) and **Mohd Muslim** (supra) would not advance the case of the accused.

13. 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, a bench of co-equal strength of 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.”

14. Same principle is echoed by another bench of co-equal strength of Hon'ble Supreme Court in the case of **NCB vs. Mohit Agarwal** (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. It may be noted here that these decisions are earlier in point of time, and therefore, the same also cannot be ignored altogether in view of the Doctrine of binding precedent, as held by a five Judges bench of Hon'ble Supreme Court in - **National Insurance Company Ltd. vs. Pranay Sethi & Another reported in (2017) 16 SCC**

680.

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 within shortest possible time, 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