

GAHC010025912024



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

**Case No. : Bail Appln./386/2024**

RAMILA BIBI AND ANR.  
R/O CHOTOLINE PARA ISHLAMPUR  
P.S. AHMEDPUR  
DIST. BIRBHUM AHMADPUR  
WEST BENGAL, 731201

2: LAILY BIBI  
W/O REZAUL SEIKH  
R/O SEIKHPARA  
P.S. SAGARDIGHI  
DIST. MURSHIDABAD  
WEST BENGAL

VERSUS

THE STATE OF ASSAM  
REP. BY THE PP, ASSAM

**Advocate for the Petitioner : MR. S MUNIR**

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

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

**ORDER**

Date : **21.06.2024**

- 1.** Heard Mr. S. Munir, learned counsel for the petitioners. Also heard Mr. R. R. Kaushik, learned Additional Public Prosecutor for the State.

**2.** This application under Section 439 of the Code of Criminal Procedure, 1973 has been filed by the petitioners, namely, *1. Ramila Bibi, who is 55 years old woman and 2. Laily Bibi*, who is 58 years old woman, who are detained behind the bars since 02.07.2022 (for last more than one year and nine months) in connection with NDPS Case No. 214/2022 under Section 20(b)(ii)(C)/29 of the NDPS Act, 1985 pending before the Court of learned Additional Sessions Judge, No. 2, Kamrup(M).

**3.** The gist of accusation is that on 01.07.2022, one Bibungsar Daimari, ASI of Police had lodged an FIR before the Officer-in-Charge of Guwahati GRPS, *inter alia*, alleging that on that day at about 9.30 PM while conducting routine train checking duty in the Train No. 15909, Avadh Assam Express at Kamakhya Railway Station, seven packets of suspected Ganja wrapped in a black colour polythene was recovered from the lower berth of the train which was occupied by the three ladies, namely, Ramila Bibi (petitioner No. 1), Samija Bibi and Laily Bibi (petitioner No. 2). On weighing of recovered Ganja, it was found that the said Ganja weighed 27.400 Kgs. On receipt of the said FIR, GRPS Case No. 86/2022 was registered and investigation was initiated. Ultimately, on completion of the investigation, charge-sheet was laid against the above named petitioners and one another co-accused and NDPS Case No. 214/2022 was registered.

**4.** It is submitted by the learned counsel for the petitioners that though the petitioners are detained behind the bars for last more than 1 year and 9 months and though the charges were framed against both of them on 07.12.2022. However, till now only two out of five listed witnesses have been examined and there is no hope of culmination of the trial at the earliest.

**5.** It is also submitted by the learned counsel for the petitioners that the last date fixed in the trial of the NDPS Case No. 214/2022 was 18.06.2024 and on the said date also, no witnesses turned up and the next date of the case is fixed on

02.07.2024 for evidence. The learned counsel for the petitioners has also submitted that though the embargo of Section 37 of the NDPS Act, 1985 is mandatory in nature, however, considering the inordinate delay in trial as well as prolonged incarceration of the above named petitioners, the embargo under such circumstances is lifted and it gives way to the right of the accused under Article 21 of the Constitution of India.

**6.** Learned counsel for the petitioner has cited a ruling of the Apex Court in "**Rabi Prakesh Vs. State of Orissa**" reported in "**2023 live law (SC) 533**", wherein it has been observed by the Hon'ble Apex Court that "*The prolonged incarceration, generally militates against the most precious fundamental right guaranteed under Article 21 of the Constitution and in such a situation, the conditional liberty must override the statutory embargo created under Section 37(1)(b)(ii) of the NDPS Act.*"

**7.** The learned counsel for the petitioner has also cited the rulings of the Apex Court in (i) "**Shariful Islam @ Sarif Vs. State of West Bengal**" (order dated 04.08.2022 in SLP Criminal No. 4173/2022), (ii) "**Dheeraj Kumar Shukla Vs. State of Uttar Pradesh**" [order dated 25.10.2023 passed in Special Leave to Appeal (Criminal) No. 6690/2022], (iii) "**Anjan Nath V. The State Of Assam**" [Order dated 17.10.2023 passed in Special Leave to Appeal (Criminal) No. 9860/2023], (iv) "**Nitesh Adhikari Vs. State of West Bengal**" (Order dated 04.05.2022 passed in SLP Criminal No. 5769/2022) and (v) "**Md. Salman Hanif Shaikh Vs. State of Gujarat**" (Order dated 22.08.2022 passed in SLA Criminal No. 5530/2022), wherein the petitioners (who were facing trial for possessing a commercial quantity of contraband) were granted bail by the Apex Court. However, due to the prolonged incarceration in all the above mentioned cases, the petitioners were allowed to go on bail. Therefore, on the same principle, the

learned counsel for the petitioners has also submitted that in the instant case also the petitioners, who have been languishing behind the bars for more than 1 year and 9 months may be allowed to go on bail.

**8.** On the other hand, learned Additional Public Prosecutor has vehemently opposed the grant of bail to the present petitioners on the grounds that the quantity of contraband seized from the possession of the above named petitioners is of commercial quantity and, therefore, the embargo of Section 37 of the NDPS Act, 1985 is applicable in the instant case, and hence, they may not be allowed to go on bail.

**9.** It is also submitted by the learned Additional Public Prosecutor that already two out of five listed witnesses have been examined and only three witnesses remain to be examined which would not take much time for completion of the trial.

**10.** I have considered the submissions made by learned counsel for both the sides as well as perused the materials available on record including the scanned copy of the case record of NDPS Case No. 214/2022 which was called for in connection with this case.

**11.** Hon'ble 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 the ground of undue delay in trial cannot be said to be fettered by Section 37 of the NDPS Act, 1985".

**12.** The Hon'ble Apex Court in "***Rabi Prakesh Vs. State of Orissa***" (supra), wherein it has been observed by the Hon'ble Apex Court that "*The prolonged incarceration, generally militates against the most precious fundamental right guaranteed under Article 21 of the Constitution and in such a situation, the*

*conditional liberty must override the statutory embargo created under Section 37(1)(b)(ii) of the NDPS Act."*

**13.** It appears on perusal of the rulings cited by learned counsel for the petitioners that in all the cases cited by the petitioners, though commercial quantity of contraband was involved and apparently the embargo of Section 37 would have been applicable in those cases, however, only because of the fact of the prolonged incarceration of the petitioners, the Apex Court allowed the petitioners to go on bail.

**14.** In view of the observation made by the Apex Court, this Court is of the considered opinion that if, under the facts and circumstances of a case, this Court comes to the finding that there is an undue delay in the completion of the trial, and that the incarceration of the petitioner is long enough, he would be entitled to get bail on the ground of such prolonged incarceration, as in such a case of prolonged incarceration, the right to life and personal liberty guaranteed to the petitioner under Article 21 of the Constitution of India would outweigh the fetter imposed under Section 37 of the NDPS Act, 1985.

**15.** It is also pertinent to mention herein that the Supreme Court of India had granted bail to an accused facing charges for possession of a 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 bars for one year and six months.

**16.** 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.

**17.** Similarly in "***Md. Salman Hanif Shaikh Vs. State of Gujarat***" (supra), the petitioner was granted bail by the Apex Court on the ground of prolonged incarceration of two years.

**18.** In "***Chitta Biswas Alias Subha Vs. The State Of West Bengal***"(Order dated 07.02.2020 passed in SLP Criminal No. 8823/2019), the Apex Court granted bail to the petitioner, who was facing a trial for possessing a commercial quantity of contraband on the ground of prolonged incarceration of 1 year 6 months.

**19.** In the instant case also, the present petitioners are detained behind the bars for more than 1 year and 9 months and the prosecution side is yet to start examining its witness and under such circumstances and view of the observations made by the Apex Court discussed hereinabove where it has dealt with the question of long incarceration of similarly situated persons who were before the Apex Court, this court is of considered opinion that in the instant case also under the facts and circumstances discussed herein above, the detention of the present petitioners for 1 year and 9 months is long enough and in view of the considered opinion of this Court, it outweighs the embargo of Section 37 of the NDPS Act, 1985 and, therefore, the petitioners are entitled to get bail on the ground of prolonged incarceration only.

**20.** In view of above, the petitioners, namely, *1. Ramila Bibi and 2. Laily Bibi*, are allowed to go on bail of Rs.50,000/- (Rupees Fifty Thousand) each with 2 sureties of like amount, one of whom should be a resident of within the State of Assam, subject to satisfaction of Court of learned Additional Sessions Judge, No. 2, Kamrup(M) with following conditions:-

- i. That the petitioners shall cooperate in the trial of NDPS Case No.

214/2022, which is pending in the Court of learned Additional Sessions Judge, No. 2, Kamrup(M);

- ii. That the petitioners shall appear before the Trial Court as and when so required by the Trial Court;
- iii. That the petitioners 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 petitioners;
- iv. That the petitioners shall provide their contact details including photocopies of their Aadhar Card or Driving License or PAN card and mobile number as well as other contact details before the Trial Court;
- v. That the petitioners shall not leave the jurisdiction of the Trial Court without prior permission of the Trial Court and when such leave is granted by the Trial Court, the petitioners shall submit their leave address and contact details during such leave before the Trial Court; and
- vi. That the petitioners shall not commit any similar offence while on bail.

**21.** With above observation, this bail application is disposed of.

**JUDGE**

**Comparing Assistant**