

GAHC010065142024



2024:GAU-AS:12951

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

Case No. : Bail Appln./945/2024

KARIM UDDIN @ ASHAM
S/O ALA UDDIN
R/O VILL- ERALIGOOL
P.S. PATHERKANDI
DIST. KARIMGANJ, ASSAM

VERSUS

THE STATE OF ASSAM
TO BE REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. A AHMED, MR A AHMED,U U KHAN,MR. M A CHOWDHURY

Advocate for the Respondent : PP, ASSAM,

**BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA**

ORDER

Date : 19.12.2024

Heard Mr. M. A. Choudhury, learned counsel for the petitioner. Also heard Mr. R. J. Baruah, learned Additional Public Prosecutor for the State respondent.

2. This is an application under Section 439 of the Code of Criminal Procedure, 1973 praying for grant of bail to the accused/petitioner, who has been arrested in connection with Special (NDPS) Case No. 144/2022, pending before the Court of learned Sessions Judge, Karimganj, arising out of Karimganj P.S. Case No. 569/2022, under Section 21(c)/29/25 of NDPS Act.

3. Scanned copy of the case record has already been received. Perused the same. Heard both sides.

4. It is submitted by Mr. Choudhury, learned counsel for the petitioner, that the present accused/petitioner is innocent and nothing has been recovered from his conscious possession. He has been arrested in connection with this case on 25.09.2022 and since then, he is in custody. It is a fact that on the day of incident, the petitioner was travelling with 2 (two) other persons from Karimganj in a vehicle and when the vehicle arrived at a Toll Gate, Jabainpur, Karimganj, where police were doing Naka Checking, the driver and other co-passenger stopped the vehicle and fled away. However, he had no knowledge about the contraband and he got apprehended in connection with this case only on

suspicion. Further he submitted that the accused/ petitioner is behind the bar for last 817 days, i.e. 2 (two) years 2 (two) months 25 (twenty five) days, and till date, the prosecution could only examine 2 (two) witnesses out of 10 (ten) numbers of witnesses, though the charge-sheet of the case was filed on 15.03.2023, and thus there is no probability of completion of trial within near future as lots of witnesses are yet to be examined by the prosecution and therefore he submitted that considering the period of long incarceration, the petitioner may be enlarged on bail.

5. Mr. Choudhury further submitted that the Hon'ble Supreme Court in the case of **Satender Kumar Antil Vs. Central Bureau of Investigation & Anr. [(2022) 10 SCC 51]** has held that word "trial" is not explained and defined for the purpose of enlargement on bail. It includes the stage of investigation thereafter.

6. In support of his submission, Mr. Choudhury, learned counsel for the petitioner, further relied on the following decisions:

- (i) **Rabi Prakash Vs. State of Odisha [2023 LiveLaw (SC) 533**
- (ii) **Citta Biswas @ Subash Vs. The State of West Bengal [Criminal Appeal No (s) 245 of 2020 (Decided on 07.02.2022)]**
- (iii) **Nitish Adhikar @ Bapan Vs. The State of West Bengal [SLP (CRI) 5769/2022 (Decided on 01.08.2022)]**

- (iv) **Shariful Islam @ Sharif Vs. The State of West Bengal [SLP(Crl) 4173/2022 (Decided on 04.08.2022)]**
- (v) **Mohammed Salman Hanif Shaikh Vs. The State of Gujarat [SLP(Crl) No. 5530/2022 (Decided on 22.08.2022)]**
- (vi) **Dheeraj Kumar Shukla Vs. The State of Uttar Pradesh [SLP(Crl) No. 6690/2022 (Decided on 25.01.2023)]**
- (vii) **Anjan Nath Vs. the State of Assam [SLP (CRL) No. 9860/2023 (Decided on 17.10.2023)]**
- (viii) **Ahmedur Rahman Barbhuiya Vs. the State of Assam [Bail Appln. No. 2802/2024 (Decided on 17.09.2024)]**

7. Mr. Baruah, learned Additional Public Prosecutor, submitted that the F.I.R. was lodged on 24.09.2024 and the charges were accordingly framed on 21.06.2023 and the case was fixed for evidence since 05.07.2023 and till date, 2 (two) witnesses are already been examined and thus it cannot be said that there is an inordinate delay in the trial of the case. That apart, PW-2, i.e. seizure witness, had implicated involvement of the present accused/petitioner in the alleged offence. More so, he submitted that there are sufficient incriminating materials in the Case Diary against the present accused/petitioner showing his direct involvement in the alleged offence. He further submitted that as the case is of commercial quantity, rigor of Section 37 of NDPS Act will follow. He further

submitted that in the case of **Narcotics Control Bureau Vs. Mohit Agarwal [Criminal Appeal Nos. 1001-1002 of 2022, arising out of SLP (Crl.) No. 6128 of 2021]**, the Hon'ble Apex Court has held that long incarceration or delay in disposal only cannot be the sole ground for entertaining the bail application. Accordingly, he submitted that this is a case of commercial in nature wherein huge quantity of contraband is alleged to have been recovered from the possession of the present accused/ petitioner and hence, his prayer may not be considered only on the ground of period of incarceration.

8. After hearing the submissions made by the learned counsels for both sides, I have perused the scanned copy of the case record and the annexures filed along with the petition.

9. As per the allegation, it is seen that on the day of incident, information was received from reliable source regarding paddling of large quantity of narcotic drugs towards Chargull through Toll Gate, Bakharshall, Karimganj. Accordingly, on the basis of the said information, the informant along with the Officer-In-Charge of Karimganj Police Station and other police staffs proceeds towards the place of occurrence and executed a Naka Checking at Toll Gate, Jabainpur, Karimganj, where they intercepted the vehicle and apprehended the accused person. During search, they recovered 43 numbers of Soap Boxes containing suspected to be heroine total weight 506 grams. Accordingly, observing all necessary formalities, those were seized by preparing seizure list in presence of the witnesses and the accused person was also arrested. However, it is the case of the petitioner that he was arrested by the police only on suspicion and the contrabands were not recovered from his conscious

possession.

10. It is a fact that the present accused/petitioner was arrested in connection with this case on 25.09.2022 with the allegation of recovery of commercial quantity of contraband from his possession and since then, the accused/petitioner is in custody. After his arrest and on completion of investigation, police find *prima facie* materials against him and accordingly filed the Charge-Sheet against him.

11. Thus, it is seen that the case is of commercial quantity and hence, the rigor of Section 37 NDPS Act will follow.

12. For ready reference, Section 37 NDPS Act is extracted hereinbelow:

"37. Offences to be cognizable and non-bailable.

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973

(b) No person accused of an offence punishable for offences under section 19 or section 24 or section 27A and also for offences involving commercial quantity shall be released on bail or on his own bond unless—

(i)the Public Prosecutor has been given an opportunity to oppose the application for such release, and

(ii)where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail."

13. Thus, as per Section 37 (1) (b) of NDPS Act, the bail can only be granted, if there is no reasonable ground for believing that accused is not guilty of such offence and that he is not likely to commit any offence while on bail. But, from

the materials available in the case record, there cannot be any reasons to believe that the accused/petitioner is not guilty of such offence or he is not likely to commit any offence while on bail.

14. But, in the same time, it cannot be denied that the accused/petitioner is behind the bar for last last 817 days, i.e. 2 (two) years 2 (two) months 25 (twenty five) days, from the date of his arrest and and till date, the prosecution could only examine 2 (two) witnesses out of 10 (ten) numbers of witnesses and it also cannot be denied that to examine the remaining witnesses, the prosecution may take a considerable period for completion of the trial.

15. In the case of **Rabi Prakash (supra)**, as relied by the learned counsel for the petitioner, the Apex Court has granted bail to the accused with a view 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)9ii) of the NDPS Act.*"

16. In the case of **Chitta Biswas @ Subash (supra)** also, the bail was granted by the Apex Court considering the long period of incarceration and also considering the fact that out of 10 (ten) numbers of witnesses, only 4 (four) witnesses were examined by the prosecution.

17. Again, in the case of **Nitish Adhikary @ Bapan (supra)**, considering the period of detention of 1 year 7 months, the bail was granted considering that the prosecution could examine only one witness and also considering that the

case is at the preliminary stage of trial.

18. Further, in the case of **Shariful Islam @ Sharif (supra)** also, the Apex Court had considered the period of incarceration, i.e. 1 year 6 months, and the bail was granted.

19. The Apex Court in the case of **Mohammed Salman Hanif Shaikh (supra)** also granted bail to the accused without expressing any views on the merits of the case and only taking into consideration the period of custody.

20. In the case of **Karnail Singh Vs. The State of Odisha [Criminal Appeal No. 2027/2022, arising out of SLP(Crl) No. 9067/2022 (Decided on 22.11.2022)]** as well as in **Dheeraj Kumar Shukla (supra)** also, the Apex Court also expressed the same view and granted bail to the accused considering the period of incarceration.

21. Same view has been expressed by the Apex Court in the case of **Anjan Nath (supra)**, as relied by the learned counsel for the petitioner.

22. In the instant case, it is seen that there are some materials available in the Case Diary and on the basis of which, the Investigating Officer has also filed the Charge-Sheet against the present accused/petitioner showing his involvement in the alleged offence. But it is also seen that in spite of filing of the Charge-Sheet in the year 2023, the prosecution could examine only 2 (two) witnesses out of 10 (ten) numbers of witnesses, though it a fact that the accused/petitioner is behind the bar for last 817 days, i.e. 2 (two) years 2 (two) months 25 (twenty

five) days.

23. In view of above and also considering the observation made by the Apex Court in the various judgments, as discussed above, and further considering the other facts and circumstances of this case, this Court is of the opinion that the period of long incarceration undergone by the accused/petitioner for more than 2 (two) months 25 (twenty five) days may be considered as a ground for bail with the conditional liberty considering the fundamental right guaranteed under Article 21 of the Constitution and, therefore, I am inclined to grant bail to the present accused/petitioner.

24. Accordingly, it is provided that on furnishing a bond of Rs. 50,000/- (Rupees twenty thousand) only with 2 (two) sureties of like amount, provided that one surety has to be a government servant, to the satisfaction of the learned Special Judge, Karimganj, the accused/petitioner, namely, Karim Uddin @ Ahmed, be enlarged on bail, subject to the following conditions:

- (i) that the petitioner shall make himself available for interrogation by the Investigating Officer as and when required;

- (ii) that the petitioner shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer; and

(iii) that the petitioner shall not leave the jurisdiction of the learned Special Judge, Karimganj, without prior permission.

25. In terms of above, this bail application stands disposed of.

JUDGE

Comparing Assistant