

GAHC010032682024



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

Case No. : Bail Appln./471/2024

ANOWAR HUSSAIN
S/O LATE ABDUL KARIM
R/O VILL- KAKRIPARA
P.S. MANKACHAR
PIN CODE- 783131, DIST. SOUTH SALMARA MANKACHAR, ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. Y S MANNAN

Advocate for the Respondent : PP, ASSAM

BEFORE
HON'BLE MRS. JUSTICE SUSMITA PHUKAN KHAUND
ORDER

22.04.2024

Heard Mr Y S Mannan, learned counsel for the petitioner, Anowar Hussain.

2. The petitioner has filed this application under Section 439 CrPC, with prayer for bail, as he is behind bars since 22.01.2022, in connection with Sessions Case No. 203/2022, arising out of Panbazar PS Case No. 163/2022, registered under Sections

21(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act, for short).

3. Heard Mr K Baishya, learned Additional Public Prosecutor for the State of Assam.

4. It is submitted on behalf of the petitioner that there was no recovery from the petitioner or from the vehicle occupied by the petitioner. Thus, no conscious possession can be attributed to the petitioner. None of the witnesses or co-accused have incriminated the petitioner when the statements were recorded. There were no incriminating evidence against the petitioner when the seizure witnesses gave their statements. Only one witness has been examined so far.

5. The learned counsel for the petitioner has also relied on the decision of Hon'ble the Supreme Court in the case of *Mohd Muslim @ Hussain –Vs- State (NCT of Delhi)*, in connection with Special Leave Petition (Crl.) No. 915 of 2023, wherein it has been observed that-

“20. The standard to be considered therefore, is one, where the court would look at the material in a broad manner, and reasonably see whether the accused’s guilt may be proved. The judgments of this court have, therefore, emphasized that the satisfaction which courts are expected to record, i.e., that the accused may not be guilty, is only prima facie, based on a reasonable reading, which does not call for meticulous examination of the materials collected during investigation (as held in Union of India v. Rattan Malik). Grant of bail on ground of undue delay in trial, cannot be said to be fettered by Section 37 of the Act, given the imperative of Section 436 A which is applicable to offences under the NDPS Act too (ref. Satender Kumar Antil (supra).

Having regard to these factors the court is of the opinion that in the facts of this case, the appellant deserves to be enlarged on bail.”

6. The learned counsel for the petitioner has also relied on the decision of Hon’ble the Supreme Court in *Rabi Prakash –vs- The State of Odisha*, in connection with Special Leave to Appeal (Crl.) No. 4169 of 2023, wherein it has been observed that-

4. As regard to the twin conditions contained in Section 37 of the NDPS Act, learned counsel for the respondent – State has been duly heard. Thus, the 1 st condition stands complied with. So far as the 2 nd condition re: formation of opinion as to whether there are reasonable grounds to believe that the petitioner is not guilty, the same may not be formed at this stage when he has already spent more than three and a half years in custody. 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 Additional Public Prosecutor has raised serious objection stating that charge was framed on 15.12.2022. It is true that only one witness was examined so far, but there are about 13 witnesses enlisted in the charge sheet and PW-1 was examined on 17.05.2023. The petitioner was driving the vehicle and there is a nexus between this vehicle and the other vehicle from which 26600 Yaba tablets were recovered.

8. I have considered the submissions at the Bar.

9. The FIR unfolds that on a tip-off on 21.06.2022 that two vehicles with consignment of drugs were approaching from Jorabat side towards Guwahati, a naka checking was held by the investigating team. After following proper procedure, two vehicles, one black coloured Scorpio, bearing Registration No. AS01DV1033 and one Tata Harrier (black colour) without registration number was intercepted. The Tata Harrier without number plate was driven by Md Safique and 14 packets wrapped with yellow coloured tape containing 133 blue coloured small packets containing total number of 26,600 Yaba tablets were seized from the black coloured Tata Harrier. These tablets were concealed in the artificial deck below the mat of the dickey of the car and the occupants of the car were Md Irfan Khan and Md Musharraf, and the driver Md Safique, were apprehended. Further, the driver of the Scorpio, bearing Registration No. AS01DV1033 is the present petitioner and the occupant was Md Amir Hussain and they were also involved with the consignment seized in connection with this case. Investigation commenced and charge sheet was laid against the present petitioner.

10. I have scrutinized the scanned copies of the Trial Court Record and also the statements of the co-accused. The statements of the witnesses and co-accused are not brought to the fore as this case is subjudiced and trial is under progress.

11. The record reveals that the present petitioner was driving the Scorpio, bearing Registration No. AS01DV1033. Without bringing the statements of the witnesses under Section 161 CrPC to the fore, it is observed that charge sheet has been laid against the

petitioner. At this juncture, it cannot be decided on the basis of the evidence of a single witness that the petitioner is innocent. It is true that the articles seized in connection with this case, more particularly, the Yaba tablets along with Rs. 7 lacs have not been seized from the vehicle of the petitioner, but at the same time, investigation of this case culminated into a charge sheet and the charge sheet was also laid against the petitioner.

12. ***Mohd Muslim @ Hussain's case (supra)*** is distinguishable from this case. The appellant, Md Muslim was arrested in the intervening night of 03/04.10.2015 and he was behind bars continuously since then till 28.03.2023. 34 witnesses were yet to be examined, but the appellant, Mohd Muslim was languishing in the jail. In the instant case, the present petitioner is behind bars since 22.01.2022. At this juncture, it cannot be held that trial has been procrastinated by the prosecution or by the Court and personal liberty of the petitioner has been curtailed. the case of ***Rabi Prakash (supra)*** is distinguishable from this instant case. The appellant Rabi Prakash was behind bars for more than 3 ½ years and only 1 out of 19 witnesses have been examined in connection with the case of the appellant, Rabi Prakash.

13. The double pronged embargo under Section 37 of the NDPS Act, is a fetter to the bail application at this stage.

14. Petition with prayer for bail is rejected at this juncture, with a liberty to the petitioner to apply for bail later, if trial is procrastinated further. The learned trial Court is directed to expedite the trial for the speedy disposal of this case.

15. Bail Application stands disposed of.

JUDGE

Comparing Assistant