

GAHC010019872024



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

Case No. : Bail Appln./293/2024

HATNEILHING KUKI
W/O LATE ISAM ZEME
TEMPORARY RESIDENT OF HOUSE NO. 51, PANJABARI, BATAHULI, P.S.
SATGAON,DIST. KAMRUP (M), ASSAM
PERMANENT RESIDENT OF POLICE COLONY (EAST) P.S. DIMAPUR, DIST.
DIMAPUR, NAGALAND.

VERSUS

THE STATE OF ASSAM
REPRESENTED BY PUBLIC PROSECUTOR, ASSAM

Advocate for the Petitioner : MR. A J HAZARIKA, MS. N RAJMEDI, MS. P N SUMI

Advocate for the Respondent : PP, ASSAM,

**BEFORE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY**

ORDER

Date : 10.09.2024

1. Heard Ms. B Sharma Goel, learned counsel for the petitioner.
Also heard Mr. M.P. Goswami, learned Addl. PP, Assam.
2. This is an application made under Section 439 Cr. P.C.

seeking bail by the accused/petitioner, namely, **Hatneilhing Kuki**, who was arrested on 05.06.2021 in connection with Satgaon PS Case No.148/2021 registered under section 22(c) of the NDPS Act.

3. Ms. Sharma Goel, learned counsel relying on the decision of the Hon'ble Apex Court in the case of **Mohd Muslim –VS- State (NCT of Delhi)** reported in **AIR 2023 SC 164** contends that, there is no scope for early disposal of trial and the petitioner has been under incarceration for more than three years.

4. Per contra, Mr. M.P. Goswami, learned Addl. PP relying on the judgment of the Hon'ble Apex Court in the case of **Narcotics Control Bureau –VS- Mohit Agarwal** reported in **2022 SCC Online 891**, argues that without having the satisfaction as regard the embargo placed in Section 37 of the NDPS Act, 1985, only on the ground of long incarceration an accused cannot be enlarged on bail.

5. Heard the learned counsel for the parties, perused the material available on record.

6. Section 37 of the NDPS Act, 1985, mandates that a Court can grant bail to an accused only after hearing the Public Prosecutor and after having satisfactions of twin conditions that there are reasonable grounds for believing that the accused is not guilty of the offence charged/alleged and that, he is not likely to commit any offence while on bail. Such satisfaction, which the Court is required to record, should be based on reasonable reading and does not called for a meticulous examination of the materials collected during the investigation or during the trial otherwise, the same will amount to mean a complete denial of bail under Section 37 of the NDPS Act, 1985 and the said provision would

effectively exclude grant of bail altogether.

7. Grant of bail, on the ground of undue delay in the trial, cannot be said to be fettered by Section 37 of the NDPS Act, 1985, inasmuch as Section 436A of the Cr.P.C., is made applicable to the offences under the NDPS Act by the Hon'ble Apex Court in the case of **Satender Kumar Antil –VS- CBI** reported in **2022 10 SCC 51**.

8. Section 36A of the NDPS Act, 1985, mandates that the offences under the Act are triable by a Special Court. In the considered opinion of this Court, such mandate of the legislature is to achieve the object that the trials are completed at the earliest possible time inasmuch as the conditions of bail and other provisions under the Act, are very stringent in nature. It is also well settled that reasonable fair and just procedure in a criminal trial is a constitutional obligation on the part of the State. A speedy trial is also one of the dimensions of the fundamental right to life under Article 21 of the Constitution of India (Reference **Raghbir Singh –Vs- State of Bihar 1986-4 SCC-481**).

9. So far relating to the constitution of Special Court, it is stated at the bar that in the State of Assam, though different Sessions Judges and Additional Sessions Judges are designated as Special Courts under Section 36A of the NDPS Act, 1985, however, these Courts are also simultaneously entrusted with the different Sessions triable offences under IPC, Criminal Appeals under IPC and to act as Special Judges under Special Act like POCSO Act, 2012. In view of such undisputed factual position, the object of speedy trial under the NDPS Act, as discussed hereinabove shall be hardly achievable.

10. In the totality of the aforesaid backdrop and propositions of

law, this Court is of the view that alongside the embargo placed in Section 37 of the NDPS Act, 1985, the ground of undue delay in trial can also be a ground for granting bail inasmuch as the Court is to come to the satisfaction that there is no likelihood of completion of trial in near future. Thus, such ground of inordinate delay, in the considered opinion of this Court, shall depend on the facts of the each case and the cause of delay is also required to be noted down.

11. On the aforesaid backdrop, now let this Court look into the facts of the present case.

12. The prosecution case is that on 05.06.2021, on the basis of secret information, SI(P) Deepjyoti Engti along with his team conducted search in the rented house of owner Ela Kumar, Batahghuli Panjabari area near Ganesh Mandir and recovered and seized 23 packets suspected to be brown sugar covered by plastic shop boxes (net weight 302 gram), Rs.20,000/- cash and two numbers of mobile handsets from the possession of accused person in the presence of witnesses. During interrogation, it is also learned that more persons were involved in the illegal contraband drugs paddling business.

13. The charge sheet was filed on 17.08.2021 under Section 22(C) of the NDPS Act and charge was framed by the learned trial Court 17.12.2022. However, first prosecution witness was examined on 14.03.2023 and the last witness was examined on 31.08.2023. Though more than one year has elapsed, no further witnesses has been examined till date and three witnesses are yet to be examined and in the meantime, the petitioner is in custody for more than three years as on date.

14. The prosecution has examined PW-4 the landlady of the house as an independent witness. Though she has admitted that the accused petitioner was her tenant and police searched the tenanted house and that police seized suspected drugs from the house, however, during the cross examination she admitted that police did not inform her nor took her permission before entering the house and when she climbed down from terrace she found that the police were already inside the premises occupied by the accused petitioner and that she do not know from whom the substances were recovered and that she did not see police weighing the contraband and that she is also not aware on what paper or document police took her signature. Thus her evidence in chief was totally dented during the cross examination as regards recovery and conscious possession.

15. Another aspect of the matter is that during pendency of this bail application, the petitioner was granted interim bail for her treatment for a period of two months and subsequently such order was extended from time to time thus at present the petitioner is enlarged on bail.

16. Therefore in the totality of the matter, such as the evidence so far produced and the delay in completion of the trial, this court is of the opinion that the petitioner has been able to make out a case for grant of bail, inasmuch as, the petitioner has not jumped bail during the period when she was granted interim bail nor there is any material to suggest that she is likely to jump bail.

17. Considering the aforesaid aspects, propositions of law and in the given facts and circumstances of the present case, this Court is of the considered opinion that by imposing stringent conditions, the attendance of the petitioner before the learned trial Court could be secured and he

can be barred from hampering and tampering or influencing the witnesses.

18. In view of the peculiar facts and circumstances of the case, the petitioner namely ***Hatneilhing Kuki***, be released on bail on executing a bail bond of Rs. 1,00,000/- (One lakh) with two suitable solvent sureties of like amount to the satisfaction of the learned Additional Sessions Judge No.2 cum Special Judge, Kamrup (M), Guwahati in connection with aforementioned case. The bail granted to the petitioner shall be subject to following conditions:-

- (a) The petitioner shall not leave the territorial jurisdiction of learned Special Judge, Kamrup (M) Assam, without prior written permission from him;
- (b) The petitioner shall not hamper and tamper with the evidence of the case;
- (c) 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.
- (d) The petitioner shall surrender his passport, if any (if not already surrendered) before the learned Special Judge, Kamrup (M) Assam.
- (e) The petitioner shall not try to contact any of the witnesses by any mode including telephone, social media etc.
- (f) The petitioner shall furnish the present residential address with proof to the learned trial Court below and shall not

change the said residence without prior permission of the learned trial Court.

(g) The petitioner shall appear before the O.C of Satgaon PS on the 1st day of every week.

(h) The petitioner shall appear before the learned trial Court below on each and every date of appearance during trial.

19. In the aforesaid terms, this bail petition is allowed.

JUDGE

Comparing Assistant