

GAHC010035262024



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

**Case No. : Bail Appln./509/2024**

FOKIRUL ISLAM @ ASLAM  
S/O ABDUL JAFOR  
R/O JORADANGGA PART-II  
P.O. AND P.S. MANKACHAR,  
DIST. SOUTH SALMARA, ASSAM

VERSUS

THE UNION OF INDIA (DRI)  
REP BY THE SC, DRI

**Advocate for the Petitioner** : MR. C K NATH, MS N DEKARAJA,MR. Y S MANNAN,MR. S MUNIR

**Advocate for the Respondent** : SC, DRI, MR. S C KEYAL

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

**ORDER**

29.08.2024

1. Heard Mr. Y. S. Mannan, learned counsel for the petitioner. Also heard Mr. S. C. Keyal, learned Standing Counsel for the DRI.
2. This is an application made under Section 439 Cr. P.C. seeking bail by the

accused/petitioner, namely, **Fokirul Islam @ Aslam**, who was arrested on 15.09.2023 in connection with D.R.I. Case No. 16/CL/NDPS/HEROIN/DRI/GZU/2023-24 being registered under Sections 8(c)/21(c)/22(c)/23(c)/27A of the Narcotic Drugs and Psychotropic Substances Act, 1985.

3. It is contended by Mr. Mannan, learned counsel for the petitioner that nothing was recovered from the possession of the petitioner and therefore, rigor of section 37(1) of the NDPS Act is not applicable in the present case. The petitioner has been arrested only on the basis of the disclosure statement of the co-accused. Therefore, the present is a fit case for grant of bail to the petitioner.
4. Mr. Mannan, 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** further contends that, there is no scope for early disposal of trial and the petitioner has been under incarceration for almost 1 year.
5. Per contra, Mr. S.C. Keyal learned standing counsel, DRI submits that huge quantity of 1118.210 grams of heroin has been recovered and the petitioner is one of the accomplice of the offence alleged and the present accused is also a co-participant and conspirator to the alleged offence
6. Mr. S. C. Keyal, learned Standing Counsel for the DRI, 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 enlarged on bail. The learned Additional Public Prosecutor has vehemently objected to the prayer of the petitioner for granting bail to the petitioner.
7. 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 call 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.

8. 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**.
9. 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, 1985, 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**).
10. 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/BNS, Criminal Appeals under IPC/BNS and they are also notified 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.
11. In the case of **Mohd. Muslim** (Supra), Hon'ble Apex Court held that a plain and literal interpretation of the conditions under Section 37 of the NDPS Act, 1985 would

effectively exclude grant of bail altogether, resulting in punitive detention and unsanctioned preventive detention as well. It was further observed by the Hon'ble Apex Court that, therefore, the only manner in which the special conditions under Section 37 of the NDPS Act, 1985 can be considered within constitutional parameters is whether the Court is reasonably satisfied on a *prima facie* look at the materials on record that accused is not guilty. Any other interpretation would result in complete denial of the bail to a person accused of an offence, such as those enacted under Section 37 of the NDPS Act, 1985. It was also 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 inasmuch Section 436A of Cr.P.C. is applicable to the offences under the NDPS Act also.

12. The Hon'ble Apex Court in some recent judgments and orders has been consistently taking a view that in case of prolonged incarceration, conditional liberty will override the statutory embargo under Section 37 of the Act inasmuch as such prolonged incarceration is against fundamental right guaranteed under Article 21 of the Constitution of India (reference **Ravi Prakash vs State of Odisha reported in 2023 0 Supreme(SC) 707**).
13. On the aforesaid settled proposition of law, now let this Court look into the facts of the present case.
14. The case of the DRI is that on 15.09.2023, on the basis of specific information that two persons are carrying substantial quantity of narcotic drugs staying in room No.5 of Lamka Guest House, Rajgarh, Link Road, House No.04, Anil Nagar, Guwahati, Assam, the DRI Officers of Guwahati zonal unit was formed and after following due process recovered 88 soap cases containing pinkish powdery substances suspected to be heroin, in a bag from the possession of the said two persons and they were apprehended.
15. On further enquiry, the apprehended persons informed the DRI Officers that there was another lady, namely, Smt. Themboi Singson and the said lady was presently staying at room number 407 of the Maa Kamakhya Grand Hotel at Chhatribari, Guwahati to find prospective buyers.

16. Accordingly the DRI Officers proceeded to the said hotel and arrested the said lady, namely, Smt. Themboi Singson along with the present petitioner on 15.09.2023.
17. Now coming to the case in hand, the prosecution has not been able to bring any material to show that the present applicant has any previous criminal history. The material so far available is the disclosure statement of the alleged co-accused. That being the position and in view of the ratio laid down in the case of **State Vs. Pallulabid Ahmed Arimutta & Others** reported in **(2022) 12 SCC 633**, and the ratio laid down in the case of **Tofan Singh Vs. State of Tamil Nadu** reported in **(2021) 4 SCC 1**, that a confessional statement recorded under Section 67 of the NDPS Act, 1985, will remain inadmissible in the trial of an offence under the NDPS Act and therefore, such statement more particularly on the basis of the confessional statement/voluntary statement of the co-accused cannot be a ground to have a reasonable belief that the accused is guilty of the offence.
18. Considering that he is languishing in jail since 15.09.2023 and in absence of any material to apprehend that in case the applicant is released on bail, he would again indulge in commission of similar offences, this Court is of the view that for the reasons recorded hereinabove, the petitioner has been able to make out a case for enlargement on bail in the crime in question. Accordingly, the bail stands allowed.
19. 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.
20. In view of the peculiar facts and circumstances of the case, the petitioner namely **Fokirul Islam @ Aslam**, be released on bail on executing a bail bond of Rs. 1,00,000/- (One lakh) with two suitable local solvent sureties of like amount, one of which should be a government employee, to the satisfaction of the learned Court of 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), Guwahati, without prior written permission from him/her;
- (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), Guwahati.
- (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 learned trial Court below on each and every date of appearance during trial, subject to learned trial Court dispensing with such condition as and when required.

In the aforesaid terms, this bail petition is allowed.

**JUDGE**

**Comparing Assistant**