

GAHC010042402024



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

Case No. : Bail Appln./610/2024

ABDUL MANNAN ALI
S/O ABDUL MATLEB ALI
R/O DOLOITOLA
P.S. HAJO
DIST. KAMRUP, ASSAM

VERSUS

THE STATE OF ASSAM
REP BY THE PP, ASSAM

Advocate for the Petitioner : MS. T SOM

Advocate for the Respondent : PP, ASSAM

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

ORDER

Date : 18.07.2024

- 1.** Heard Mr. K. N. Choudhury, learned senior counsel assisted by Ms. T. Som, learned counsel for the petitioner. Also heard Mr. B. B. Gogoi, 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 petitioner, namely, Abdul Mannan Ali who has been detained behind the bars since 30.01.2023 (for last more than 1 year 6 months) in connection with NDPS Case No. 86/2023 corresponding to Jalukbari P. S. Case No.56/2023, under Section 21(c) of the NDPS Act, 1985.

3. The gist of the accusation in this case is that on 31.01.2023, one, Pritam Das, SI of Police of Jalukbari Out Post had lodged an FIR before the Officer-in-Charge of Jalukbari Police Station, inter-alia, alleging that the accused person's name in the FIR (the present petitioner) was apprehended while he was coming on his motorcycle bearing Registration No. AS-25-V-2700 and 40 numbers of codeine phosphate cough syrup and 200 numbers of Nitzacare (Nitrazepam tablets) were recovered from his possession.

4. On receipt of this FIR, Jalukbari P. S. Case No.56/2023 was registered and investigation was initiated.

5. After completion of the investigation, charge sheet was laid against the above named petitioner under Section 21(c) of the NDPS Act, 1985 and trial was initiated.

6. The learned counsel for the petitioner has submitted that, though the petitioner has been detained behind the bars for last more than 1 year 6 months, however, in spite of such a long incarceration, out of 9 listed witnesses, only 1 has been examined till date and examined till date, and there is no prospect of early culmination of trial and he submits that on the ground of prolonged incarceration, the petitioner is entitled to get bail.

7. The learned counsel for the petitioner also submits that, though the

embargo of Section 37 of the NDPS Act 1985 is mandatory in nature, however, in view of the observation made by the Supreme Court in several of its rulings, in case of inordinate delay in trial and prolonged incarceration, the embargo under Section 37 of the NDPS Act, 1985 is lifted, and it gives weight to the right of the accused, guaranteed under Article 21 of the Constitution of India.

8. The learned counsel for the petitioner has relied on a full-bench decision of the Apex Court. In the case of "***Shariful Islam @ Sarif Vs. State of West Bengal***" reported in ***2022 SCC Online SC 2069***, where also the petitioner who was facing a trial for possessing commercial quantity of contraband was released on bail due to his long incarceration of 1 year 6 months.

9. On the other hand, the learned Additional Public Prosecutor has submitted that since the quantity of contraband seized from the possession of the petitioner is commercial quantity, the embargo of Section 37 of the NDPS Act, 1985 is applicable in this case, and on that ground he has opposed the grant of bail to the above-named petitioner.

10. I have considered the submissions made by the learned counsel for the rival parties and perused the materials available on record.

11. It appears that since the date of his arrest on 30.01.2023, the petitioner has been detained behind the bars, and though a period of 1 year 6 months have lapsed, however, till now only 1 out of 9 listed prosecution witnesses has been examined till now and there is unlikelihood of early culmination of the trial.

12. The 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".

13. The Apex Court in "**Rabi Prakesh Vs. State of Orissa**" reported in **2023 live law (SC) 533**, wherein it has been observed by the 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.*"

14. It appears on perusal of the rulings cited by learned counsel for the petitioner that in all the cases cited by the petitioner, 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.

15. 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 Section Article 21 of the Constitution of India would outweigh the fetter imposed under Section 37 of the NDPS Act, 1985.

16. In the instant case also, the present petitioner has been detained behind the bars for more than 1 years 6 months and there is unlikelihood of early culmination of the trial, hence, in view of the facts and circumstances of this

case as well as considering the observations made by the Apex Court in the rulings cited hereinabove, wherein, it has dealt with the question of long incarceration of similarly situated petitioners who were before the Apex Court, this Court is of the considered opinion that in the instant case also, the facts and circumstances are such that the long incarceration of the present petitioner outweighs the embargo of Section 37 of the NDPS, Act 1985 and the petitioner is therefore, entitled to get bail on the ground of prolonged incarceration only.

17. In view of the above, the petitioner, namely, Abdul Mannan Ali is allowed to go on bail of Rs. 50,000/- (Rupees Fifty Thousand only) with two sureties of like amount subject to the satisfaction of the learned Additional Sessions Judge No. 2 Kamrup (M), Guwahati with the following conditions:

- i.** That the petitioner shall cooperate in the trial of NDPS Case No. 86/2023, which is pending in the Court of learned Additional Sessions Judge No. 2 Kamrup (M), Guwahati;
- ii.** That the petitioner shall appear before the Trial Court as and when so required by the Trial Court;
- iii.** That the petitioner 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 petitioner;
- iv.** That the petitioner shall provide his contact details including photocopies of his Aadhar Card or Driving License or PAN card, and mobile number as well as other contact details before the

Trial Court;

v. That the petitioner 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 petitioner shall submit his leave address and contact details during such leave before the Trial Court; and

vi. That the petitioner shall not commit any similar offence while on bail.

18. With the above observation, this bail application is accordingly disposed of.

JUDGE

Comparing Assistant