GAHC040014912023

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

Case No. : BA/109/2023

Asadul Ali
S/o Shri Hatim Ali, presently residing at A Sector, Naharlagun, PO/PS Naharlagun, Dist. Papum Pare, Arunachal Pradesh.

VERSUS

THE STATE OF AP
represented by Public Prosecutor.

Advocate for the Petitioner : T Gameh

Advocate for the Respondent : P P of AP

Linked Case : IA(Crl)/63/2023

Asadul Ali
Age: 25
Occupation :
Address:S/o Shri Hatim Ali
presently residing at A Sector
Naharlagun
PO/PS Naharlagun
District Papum Pare
AP

VERSUS

THE STATE OF AP
Age: 0

Occupation :
Address:represented by the PP of AP

Advocate for : T Gameh
Advocate for : appearing for THE STATE OF AP: Advocate appearing for respectively.

BEFORE
HONBLE MR. JUSTICE KARDAK ETE

ORDER

Date : 17.11.2023

Heard Mr. T. Gameh, the learned counsel for the applicant and also heard Mr. J. Tsering, the learned Public Prosecutor for the State of Arunachal Pradesh.

2. This is an application under Section 439 read with Section 167(2)(a)(ii) of the Criminal Proceeding Code, 1973, for statutory/default bail to the accused, namely, **Shri Shakir Ahmed** in connection with Nirjuli P.S. Case No. 82/2023 under Section 21(b) of NDPS Act 1985.

3. The case set up by the prosecution is that an FIR was lodged by one Shri P. Simi (Inspector) before the Nirjuli Police Station stating that reliable information was received from the source that on 01.09.2023 one person was going to deliver huge quantity of Narcotics Drugs (Heroin) at Banderdewa/Nirjuli/Naharlagun area. Accordingly, information was conveyed to the SP. He verbally directed the informant to constitute a team under the supervision of SP. Informant along with officers and constables proceeded from Police Station to locate the peddler and also

called Executive Magistrate and independent witnesses to accompany search and seizure. On the basis of input, operation to intercept and catch the peddlers, the police laid a trap at Karsingsa block point. However, at the end of the moment the peddlers changed their plan and decided to cause the deal at Bage Tinali, Nirjuli. After due consultation with the SP, the team laid trap at Bage Tinali, Nirjuli with the help of Nirjuli Police Station staff. The operation underwent whole night and finally, on the early morning dated 02.09.2023 the car bearing registration No. AS-01 AR 9367 and the peddlers were intercepted at near Bage Tinali and 1(one) soap case containing plastic pouch with suspected heroin weighing total 9.3 gms excluding soap case weight found from their possession. Subsequently, the recovered heroin and the car Hyundai i20 bearing registration No. As-01 AR-9367 was seized from their possession. Further, on interrogation it was revealed that another deal was to be occurred at A-sector, Naharlagun. Subsequently, on being led by them, the police team apprehended the drug peddlers along with 4(four) containers containing suspected heroin and 1(one) empty container. And before searching their body all of them were informed of their rights under Section 50 NDPS Act and they consented that their body could be searched by police officer. Upon searching of their body 1(one) soap case containing pink colour powder of suspected heroin recovered from the possession of accused persons (1, 2 & 3) and 4(four) filled containers weighing 5.6 gms from accused persons (4 & 5) and the substance was weighed with the help of digital weighing machine belonging to Banderdewa PS and weight of 1(one) packet of pouch was 9.3 gms and weight of 4(four) containers of

suspected heroin marked as B1 (weighing total 5.7 gm including container weight and excluding container weight 1.7 gm), B2 (weighing total 5.2 gm including container weight and excluding container weight 1.4 gm) B3 (Weighing total 5.7 gms including container weight and excluding container weight 1.2 gms) B4 (weighing total 5.7 gms including container weight and excluding container weight 1.3 gms) was 5.6 gms excluding container weight. Total 14.9 gms suspected heroin seized and seizure was made on the spot in presence of Executive Magistrate, Banderdewa and independent witnesses. Accordingly, the FIR was registered as Nirjuli P.S. Case No. 82/2023 under Section 21(b) of NDPS Act.

4. Pursuant thereto, the accused, namely, Shri **Shri Shakir Ahmed** was arrested on 02.09.2023 and since then he is languishing in the jail.

5. Mr. T. Gameh, learned counsel for the applicant submits that the accused is in jail for more than 74 days as on date since his arrest. The police has failed to file the chargesheet within a stipulated date of 60 days. Thus, the accused is entitled to be released on default bail under Section 167(2)(a)(ii) of the Cr.P.C 1973.

6. Mr. J. Tsering, learned Public Prosecutor fairly submits that as on date no chargesheet has been filed which ought to have been filed within prescribed period of 60 days.

7. Having considered the submissions of the learned counsel for the parties and the law laid down by the Hon'ble Supreme Court in the case of ***Rakesh Kumar Paul vs. State of Assam*** reported in ***(2017) 15 SCC***

67, wherein the Hon'ble Supreme Court has held that in all cases where minimum sentence is less than 10(ten) years but maximum sentence is not death or life imprisonment then Section 167(2)(a)(ii) will apply and the accused will be entitled to grant of default bail after 60 days in case charge-sheet is not filed, the present accused is entitled for default bail.

8. Having considered the submissions of the learned counsel for the parties and considering the fact that the police has not filed charge-sheet even after lapse of 74 days, this Court is of the view that the accused has indefeasible right to be released on default bail by operation of law.

9. Accordingly, the accused, namely, **Shri Shakir Ahmed** shall be released on bail forthwith in connection with Nirjuli P.S. Case No. 82/2023 under Section 21(b) of NDPS Act on furnishing a bail bond.

10. This bail application stands allowed and disposed of accordingly.

JUDGE

Comparing Assistant