

GAHC010007452023



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

Case No. : Bail Appln./162/2023

RITUL ALI
S/O LATE AHMED ALI
R/O VILL- NO. 2 JALAH, P.S. CHANGSARI
DIST. KAMRUP, ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MS. S K NARGIS

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY

ORDER

03.03.2023

This is an application made under Section 439 Cr. P.C. seeking bail by the accused/petitioner, namely, **Ritul Ali**, who was arrested on 10.06.2022 in

connection with the Special NDPS Case No. 41/2022 arising out of Changsari P.S. Case No. 123/2022 under Section 22(b)/29 added Sec.21(C) of NDPS Act.

2. Heard Ms. S. K. Nargis, learned counsel for the petitioner. Also heard Mr. S. H. Bora, learned Additional Public Prosecutor for the State of Assam.

3. The said case has been registered on the basis of an FIR lodged by one ASI Upananda Kalita on 18.03.2022, to the effect that acting on a tip off, they have intercepted one vehicle bearing registration No. AS-01DT/2019, Mahindra KUV, and found two persons, namely, Md. Safik Ali and Sri Manoj Boro and recovered 65 nos of AL-QUIREX Cough syrup from the possession of the accused persons and seized the same preparing seizure list in present of the witnesses.

4. Ms. Nargis, learned counsel for the petitioner submits that the accused is behind the bar for the last 226 days.

5. This Court has granted bail to the co-accused under its order dated 04.01.2023 passed in Bail Appln. No. 3253/2022, which is quoted herein below:-

“Mr. Das, learned counsel for the accused submits that the accused is behind the bar for the last 293 days and in the meantime, the IO has laid charge sheet against the accused and the learned court below has framed charge against the accused under Section 22(c) of the NDPS Act and till date, one witness has been examined by the prosecution side. Referring to the charge sheet, which is enclosed with the petition as Annexure-B, Mr. Das submits that the IO has indicated in the charge sheet that during investigation he came to know that on 17.03.2022, one Abdul Ali, who deals with the business of QUREX, brought the contraband from the pharmacy of Md. Ritul Ali and kept secretly in the dicky of vehicle No. AS 01 DT 2019, which was used by Md. Safik Ali.

Referring to the evidence of PW-1, the first informant, the learned counsel

for the accused submits that during search of the vehicle in which accused Safik Ali and Monoj Boro were travelling, he found the dicky of the car open and found one big size plastic jar about 20 litre capacities inside the dicky with AL-Qurex cough syrup bottles. Mr. Das further submits that though 65 numbers of AL- QUREX cough syrup was recovered from the car, in which the accused were travelling, the accused was not aware of the same and it was not seized from the conscious possession of the accused as per the charge sheet and it was placed by one Abdul Ali, without the knowledge of accused in the vehicle in which he was travelling. And as such, the rigors of section 37 of the NDPS Act will not come into play here and therefore, it is contended to allow this petition.

On the other hand, Mr. R. JU. Baruah, learned Addl. PP fairly submits that as per the charge sheet, the 65 bottle of AL-QUREX cough syrup was placed in the vehicle of Safik Ali by one Abdul Ali who procured the same from the pharmacy of Ritul Ali, placed the same in the vehicle where accused Safik Ali and present accused were travelling.

This being the position, this Court is of the considered opinion that the bar of Section 37 NDPS Act will not come into play here in this case as it was not recovered from the conscious position of the accused and the co-accused Safik Ali, who was travelling with the present accused Monoj Boro has already been granted bail by Court in BA No. 1381/2022, vide the order dated 21.06.2022, on the same ground.

Having considered the above and also considered the submission of learned Advocates for the both the sides and the observations made by this Court in BA No. 1381/2022, in the order dated 21.06.2022, this Court is of the view that a case for granting bail to the accused is made out and accordingly, it is provided that on furnishing a bond of Rs. 50,000/- with one surety of like amount to the satisfaction of the learned Special Judge, NDPS Act, Amingaon, the accused be enlarged on bail”.

6. From materials available and the order passed, it is seen that the only allegation against the present accused is that he is a pharmacist from whose pharmacy the alleged 65 bottle of AL-QUIREX cough syrups were bought and were kept by one Abdul Ali.

7. This Court is also of the view that the bar under Section 37 NDPS Act will not come in the present case also inasmuch as the contraband was not recovered from the conscious position of the accused and there is only a statement by co-accused that it has been procured from the pharmacy of the present accused.

8. Having considered above, this Court is of the view that a case for granting bail to the accused is made out. Accordingly, the petitioner, named above, shall be released on bail in connection with the case aforementioned on furnishing bail bond of Rs. 30,000/- with one suitable surety of like amount, to the satisfaction of the learned Special Judge, NDPS, Amingaon.

The direction for bail is further subject to the conditions that the petitioner:

- (a) Shall not leave the territorial jurisdiction of learned Special Judge, NDPS, Amingaon, without prior written permission from him;
- (b) Shall not hamper with the investigation of the case and tamper with the evidence of the case;
- (c) 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 office.

In terms of the above, this bail application stands disposed of.

Return the case diary.

JUDGE

Comparing Assistant