

GAHC010014212023



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

Case No. : Bail Appln./269/2023

MD ASHWAD @ ASHWAD ULLAH @ ASHAD ULLAH @ ASHADUL ISLAM @
ASHADUL HOQUE
S/O- ABDUL ROFIK @ ABDUL RAHIM, R/O- VILL- PALAHJURI, P.S-
MOIRABARI, DIST- NAGAON, ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR J C BORAH

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE AJIT BORTHAKUR

ORDER

Date : 10.05.2023

Heard Mr. JC Borah learned Counsel for the accused petitioner as well as Mr. RJ Baruah, learned Addl. P.P., Assam for the State respondent.

By this petition under Section 439 Cr.P.C., the accused-petitioner, namely, **Md. Ashwad @ Ashwad Ullah @ Ashad Ullah @ Ashadul Islam @ Ashadul Hoque** has prayed for

grant of bail in connection with **NDPS Case No. 05/2022 (Moirabari PS No. 268/2021)** u/Sections 21 (b)/24/25/27/ 27 A/29 of NDPS Act.

Scanned copy of the case diary is placed before the Court.

Mr. JC Borah learned Counsel for the accused petitioner, submits that the accused has been in judicial custody for more than 1 year 10 months despite the co-accused persons are released on bail and the seized contraband is of intermediate quantity.

Opposing the bail application, Mr. RJ Baruah, learned Additional Public Prosecutor, submits that the accused petitioner is involved in organised crime of drug trafficking and apart from other charges, he is charged under Section 27 A of the NDPS Act. Mr. Boruah further submits that the accused has been implicated in three other cases under the NDPS Act and as such if the liberty of bail is granted he, it is certain, will breach the conditions of bail.

The case relates to recovery and seizure of 47.02 gm of suspected heroin from the FIR named accused persons.

It is noticed that the accused petitioner is in judicial custody for 665 days since 15.07.2021.

A perusal of the record reveals that charges under Sections 21 (b)/25/29/27A/29 of the NDPS Act were framed against the accused vide order, dated 04.07.2022. Six co-accused persons are already released on bail and two other accused persons who were also released on bail have not turned up. Therefore, the learned trial court could not examine any prosecution witness.

The charge against the accused petitioner is graver than other co-accused persons by virtue of addition of the offence under Section 27A of the NDPS Act.

Besides making seizure of 0.08 gram of heroin, a cash sum of Rs.5,54,000 was also seized.

The bar in granting bail under Section 37 of the NDPS Act is not applicable in matters of intermediate quantity of contraband.

Having heard the learned counsel of both sides, perusal of record along with the case diary and maintaining parity in orders and further, the length of detention in judicial custody, this Court is of the considered opinion that further continuation of detention of the accused

petitioner in the interest of investigation is not warranted.

Accordingly, it is provided that the accused petitioner, named above shall be released on bail of **Rs. 50,000/-** with 2(two) sureties of like amount to the satisfaction of the learned **Special Judge (NDPS Act) , Kamrup(M), Guwahati** subject to the following conditions- :

- i) That the accused petitioner shall continue to appear before the learned trial Court on all dates to be fixed from time to time till the case is disposed of; and
- ii) That the accused petitioner shall not directly or indirectly make any inducement, threat or promise to any of the remaining prosecution witnesses; and
- iii) That the accused petitioner shall refrain from committing any similar offences in future, of which he is suspected of commission; and
- iv) That out of the two sureties, one must be a government servant subject to verification of the relevant documents, if deemed necessary and after such verification, the learned Court below shall return the original documents retaining legible scanned copy thereof on record for future reference.

Breach of any of the above conditions of bail shall render cancellation of the bail in accordance with law.

This disposes of the bail application.

JUDGE

Comparing Assistant