

GAHC010046632023



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

Case No. : Bail Appln./813/2023

RIMAN SHARMA
S/O- LATE DHERU SHARMA, R/O-LACHIT NAGAR, B NO. 09, H NO. 7, P.S-
PALTAN BAZAR, DIST- KAMRUP(M), 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 AJIT BORTHAKUR

ORDER

Date : 11.04.2023

Heard Ms. S. K. Nargis, learned counsel appearing for the accused petitioner as well as Mr. R. J. Baruah, learned Addl. P.P., Assam appearing for the State respondent.

By this petition under Section 439 Cr.P.C., the accused-petitioner, namely, **Riman Sharma**, has prayed for grant of bail in connection with **NDPS Case No. 139/2021** arising out of **Paltan Bazar P.S. Case No. 598/2021** under Sections **22(C)/27/28/29** of the NDPS Act.

The scanned copy of the case record along with the case diary, as called for, is placed before the Court.

It is noticed that the accused petitioner has been in judicial custody since 04.07.2021, i.e. for 646 days.

Ms. Nargis, learned counsel for the accused petitioner, submits that the accused has been in judicial custody for 646 days on accusation of allegedly possessing 599 grams of heroin, while two co-accused persons are already released on bail. Ms. Nargis further submits that no contraband was recovered and seized from his possession. It has been submitted that in the instant case, the learned Trial Court has examined nine prosecution witnesses out of eleven listed witnesses and none of them has implicated the accused petitioner. Therefore, Ms. Nargis submits that the accused may be directed to be released on bail, subject to any condition(s).

Per contra, Mr. Baruah, learned Addl. Public Prosecutor, submits that as the accused has been facing trial for allegedly possessing commercial quantity of heroin, at the fag end of trial and in view of the bar under Section 37 of the NDPS Act, the bail prayer of the accused may not be accepted.

The case relates to recovery and seizure of suspected heroin, weighing 599 grams, from the houses of the accused petitioner and two others.

A perusal of the case record, *inter-alia*, reveals that the police, after completion of investigation, laid a charge-sheet under Sections 22(c)/27/28/29 of the NDPS Act against the present accused petitioner and three others, vide order, dated 24.09.2021. After consideration of the materials on the case record and hearing of both sides, the learned Trial Court framed charges under Sections 22(c)/29 of the NDPS Act against them vide order, dated 03.12.2021.

The sample of seized substance gave positive tests for heroin vide the FSL report.

The case record reveals that only six prosecution witnesses are examined, out of eleven listed witnesses. On reading of the evidence of the prosecution witnesses along with the case diary, it is revealed that there are certain materials giving rise to a

presumption that he cannot conclusively be said to be not guilty of the charges, subject, of course, to final outcome on completion of trial of the case. However, it is noticed that there is no prospect of early disposal of the case keeping in consideration of trend of appearance of the prosecution witnesses.

Therefore, taking into consideration of the ratio of the judgment in *Mohd. Muslim @ Hussain -vs- State (NCT of Delhi)* and in *Nitish Adhikary @ Bapan -Vs- the State of West Bengal* passed in Special Leave to Appeal (Crl.) No(s). 5769/2022 as well as *Amit Singh Moni -vs- State of Himachal Pradesh* passed in Criminal Appeal No. 668/2020 [SLP (Criminal) No. 3813/2020] and also the orders, dated 29.11.2022 and 27.02.2023 and Article 21 of the Constitution of India, the accused cannot be detained in judicial custody indefinitely.

On the other hand, it is also noticed that the accused petitioner, being a permanent resident of Lachit Nagar under Paltan Bazar P.S., there is no chance of him jumping the course of trial. There is also no evidence of criminal antecedent.

Accordingly, considering the facts and circumstances discussed hereinabove, it is provided that the accused petitioner, named above, shall be released on bail of **Rs. 1,00,000/- (One Lakh) only** with one surety of like amount to the satisfaction of the **learned Special Judge (NDPS Act), Kamrup (M) at 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 listed prosecution witnesses.

Any breach of the above conditions shall render cancellation of the bail in accordance with law.

Be it mentioned here that any observation made in this bail order shall have no bearing in the judicial discretion of the learned court below.

This disposes of the bail application.

JUDGE

Comparing Assistant