

GAHC010048382023



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

Case No. : Bail Appln./860/2023

AFTAB HUSSAIN MAZUMDER
S/O. SAHAB UDDIN MAZUMDER, R/O. VILL. ISLAMABAD PT-II, P.S
DHOLAI, DISTRICT- CACHAR, ASSAM.

VERSUS

THE STATE OF ASSAM
REPRESENTED BY PP, ASSAM

Advocate for the Petitioner : MR H R A CHOUDHURY

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE AJIT BORTHAKUR

ORDER

Date : 31.03.2023

Heard Mr. HRA Choudhury, learned Senior Counsel for the accused petitioner as well as Mr. B Sarma, learned Addl. P.P., Assam for the State respondent.

By this petition under Section 439 Cr.P.C., the accused-petitioner, namely, **Aftab Hussain Mazumder** has prayed for grant of bail in connection with **Special (NDPS) Case No. 132/2022** arising out of **Badarpur P.S. Case No.197/2022** under Section 22(c)/25/29 of NDPS Act.

Scanned copy of the case records is received.

Mr. HRA Choudhury, learned Senior Counsel for the accused petitioner, submits that the accused petitioner has been in judicial custody for 93 days in connection with the instant charge sheeted case and the charges are yet to be considered by the learned trial Court. Mr. Choudhury further submits that no any incriminating tablet was recovered from the accused petitioner. It is also submitted that after 3 months of the incident, the accused was arrested despite being absolutely innocent. Therefore, Mr. Choudhury submits that the accused petitioner may be directed to be released on bail.

Per contra, Mr. B Sharma, learned Additional Public Prosecutor, submits that the trial in the case involving commercial quantity of contraband is yet to commence and as such, in view of the bar under Section 37 of the NDPS Act, the bail application may be rejected.

The prosecution case in brief is that on receipt of reliable information, the informant along with a team of 1st Bn BSF and Intelligent Branch of BSF, Karimganj and Badarpur PS detained a vehicle bearing No.AS-J-4261 transporting suspected drugs from Silchar to Karimganj and recovered 50 numbers of Blue packets containing suspected YABA tablets (orange/red colour) containing approximately 10000 nos. of tablets with gross weight 1007 grams.

It is noticed that the accused petitioner has been in judicial custody since 28.12.2022 that is, for 93 days.

A perusal of the case record reveals that the police after completion of investigation submitted charge-sheet, *inter-alia*, under Sections 25/29 of the NDPS Act against the petitioner and under Sections 22 (C) /29 of the said Act against three others on 09.01.2023. The case was fixed on 28.04.2023 for consideration of charges but the status is not ascertained from the case record nor the parties could produce any copy of order of the aforesaid latest date passed by the learned trial Court.

The case diary reveals that the FSL report on the sample of the seized tablets gave positive tests for Methamphetamine.

The accused is the owner of the vehicle from which the commercial quantity of methamphetamine tablets weighing more than one kg was seized. The case diary reveals

prima facie evidence of complicity of the accused petitioner in the commission of the aforesaid crime under the NDPS Act.

Therefore, this Court is of the opinion that in view of the stringent bar contained in Section 37 of the NDPS Act, the accused petitioner cannot be granted the liberty of bail on mere ground of length of detention.

Accordingly, the bail application stands rejected.

However, as the accused has been in jail custody, the learned trial court is directed to expedite the trial of the case.

The bail application stands disposed of.

JUDGE

Comparing Assistant