

GAHC010066502023



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

I.A.(Crl.)/325/2023

MD. HABIL ALI
S/O LATE EDDRISH ALI
VILL.- SONARIGAON
P.S.- DHING
DIST.- NAGAON
ASSAM.

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE P.P.
ASSAM

Advocate for : MR. Y S MANNAN
Advocate for : PP
ASSAM appearing for THE STATE OF ASSAM

IN CRL.A. No. 138/2023

BEFORE

**HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA**

ORDER

22-06-2023

(Michael Zothankhuma, J)

1. Heard Mr. Y.S.Mannan, learned counsel appearing for the applicant. Also heard Ms. S. Jahan, learned Additional P.P. appearing for the State of Assam.

2. This application under Section 389 of Code of Criminal Procedure, 1973 is for suspension of the sentence passed by the Court of the learned Additional Sessions Judge No. 2, Nagaon, Assam in Special NDPS Case No. 17/2021. In the impugned Judgment dated 17.12.2022 passed in Special NDPS Case No. 17/2021, the applicant has been convicted under Section 18(C), 20(b) (ii) (c) and 21(c) of the NDPS Act, 1985.

3. The learned counsel for the applicant submits that there was non-compliance of Section 42 and 57 of the NDPS Act, during the time of search and seizure and as there has been violation of the mandatory provisions of law, the learned trial Court could not have convicted the applicant, considering that the prosecution case and that the entire proceedings before the learned trial Court was vitiated. Further, there is nothing to connect the applicant with the contraband allegedly recovered by the police, inasmuch as the seizure witnesses have not stated in their evidence that they had witnessed the search, recovery and seizure of the contraband. This aspect of the matter not having been gone into by the learned trial Court, the learned trial Court could not have made any

findings of guilt against the applicant. He accordingly submits that as the proceedings before the learned trial Court was vitiated on account of violation of the mandatory provisions of law and the fact that there was nothing to prove that the applicant was in possession of the contraband drugs, the sentence should be suspended and the applicant should be released.

4. Ms. S. Jahan, learned Additional Public Prosecutor, on the other hand, submits that the learned trial Court having come to a finding that the applicant was guilty of the offence, it would not be proper for this Court to suspend the sentence and release him on bail, particularly when the contraband drugs were of commercial quantity. She also submits that in terms of Section 54 of the NDPS Act, there is a presumption of possession of the illicit articles on the part of the accused/applicant.

5. She accordingly prays that the applicant should be rejected.

6. On considering the submissions made by the learned counsel by the parties, we find that the applicant has been convicted on account of recovery and seizure of commercial quantity of contraband drugs. The applicant has also been found guilty and convicted under Section 18(C), 20(b) (ii) (c) and Section 21(c) NDPS Act.

7. The issue whether there are reasonable grounds for believing that the applicant is not guilty of the offence would require going into the detailed merits of the case and unless the Judgment of the learned Trial Court is set aside is found to be unsustainable, suspension of sentence would not be justified and the applicant cannot be released on bail. On consideration of the materials before us, including the evidence, we are of the view that no case for suspension of the sentence has been made out due to his conviction by the learned Trial Court. Accordingly, the applicant cannot be released on bail at this

stage.

8. The application is accordingly rejected. However, the observation and findings made in this order should not be construed to be the final observation and findings of this Court at the time of final hearing of the case.

JUDGE

JUDGE

Comparing Assistant