

GAHC010066822023



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

**Case No. : Bail Appln./1144/2023**

ASIF SEIKH  
S/O HARU SEIKH, R/O VILL. DURGA MANDIR P.O. BALADMARI P.S  
GOALPARA DIST. GOALPARA ASSAM

VERSUS

THE STATE OF ASSAM  
REP. BY THE PP, ASSAM

**Advocate for the Petitioner** : MR. A CHAUDHURY

**Advocate for the Respondent** : PP, ASSAM

**BEFORE**  
**HON'BLE MR. JUSTICE ROBIN PHUKAN**  
ORDER

10.05.2023.

- 1.** Heard Mr. A. Chaudhury, learned counsel for the accused and Mr. K.K. Parasar, learned Addl. P.P., Assam appearing for the State respondent.
- 2.** This application, under Section 439 of the Code of Criminal Procedure, 1973, is preferred by Asif Seikh, who has been languishing in jail hazot since 29.08.2022, in connection with the Goalpara P.S. Case No. 197/2022, under Sections 22(c)/29 of the NDPS Act, for granting bail.

**3.** The said case has been registered on the basis of an FIR lodged by SI - S.K. Ayez, on 27.08.2022, to the effect that acting on a tip off they have conducted search in the house of the accused Asif Seikh situated at Durgamandir, at about 7 pm and recovered 240 numbers of Chlorpheniramine Maleate & Codeine Phosphate Syrup (Xlintus-Forte Cough Syrup 100 ml each) and also they have apprehended one Nayan Kumar Das, and on the basis of their statements conducted search in the house of Rafikul Islam and recovered 50 numbers of Codeine Base Cough Syrup (ToLEX-CC 100 ml each) and seized the same preparing seizure list, in presence of witnesses.

**4.** Mr. Chaudhury, learned counsel for the accused submits that this is the third bail application, and the earlier two applications were rejected by this court, vide order dated 04.01.2023, in BA No. 3134/2022, and vide order dated 10.03.2023, in BA No. 555/2023, after perusing the case diary, and this application is being filed primarily on the grounds that:

(1) The accused is languishing in jail hazot for more than 8 months.

(2) The learned court below has examined 5 witnesses out of 10 cited witnesses and out of 5 witnesses 3 are seizure witnesses and they have not supported the prosecution case.

**5.** Mr. Chaudhury, learned counsel for the accused further submits that as the seizure of contraband substance is not proved by the seizure witnesses the rigors of Section 37 of the NDPS Act is not attracted here in this case. Further, Mr. Chaudhury submits that trial is going on and the accused person is ready to participate in the trial and therefore, it is contended to allow the petition. Mr. Chaudhury has referred following case laws in support of his submission:-

(i) Union of India vs. Leen Martin and Another, reported in (2018) 4 SCC 490;

- (ii) Gorakh Nath Prasad vs. State of Bihar, reported in (2018) 2 SCC 305;
- (iii) Sanjeet Kumar Singh @ Munna Kumar Singh vs. State of Chattishgarh, reported in 2022 LiveLaw(SC) 724;
- (iv) Mohd Muslim @ Hussain vs. State (NCT of Delhi) Criminal Appeal No(S)--- of 2023 @ Special Leave Petition (Crl.) (No(s). 915 of 2023.
- (v) Maresh Kumar @ Nitu vs. State of Himachal Pradesh, reported in (2017) 15 SCC 684;
- (vi) Raja Ram vs. State of Rajasthan, reported in (2005) 5 SCC 272; and
- (vii) Jitendra And Another vs. State of M.P., reported in 92004) 10 SCC 562.

**6.** On the other hand, Mr. Parasar, learned Addl. P.P., Assam, representing the State respondent has vehemently opposed the petition on the ground that though some contradictions are there in the versions of seizure witnesses, yet, it premature to arrive at a conclusion that seizure is not proved while 5 more witnesses are left to be examined. It is the further submission of Mr. Parasar that the offences are serious in nature, involving commercial quantity of contraband substance and the requirement of Section 37 of the NDPS Act has not been satisfied herein this case and therefore, it is contended to dismiss the petition.

**7.** Having heard the submissions of learned Advocates of both sides, I have carefully gone through the petition and the documents placed on the record and also perused the scanned copy of the record, received from the learned Court

below. Also I have gone through the case laws relied upon by the learned counsel for the accused.

**8.** It is not in dispute that after completion of investigation, the investigating officer has laid charge sheet against the accused persons under Sections 22(c)/29 of the NDPS Act and the learned Court below has already framed charges against the accused under the said Sections of law. It is also not in dispute that the learned Court below has examined 5 witnesses till date.

**9.** Having gone through the statement of the witnesses, it cannot be said at this stage that the charges, so framed against the present accused is without any basis. Admittedly, some contradictions appeared in the versions of the seizure witnesses. But, it never furnishes a ground for presuming that the accused is innocent while five more witnesses are yet to be examined. It is worth mentioning in this context that in the case of **Baldev Singh vs. State of Haryana**, reported in **Manu/SC/1268/2015**, it has been held that conviction in an NDPS case can be based on the testimony of police official, if found reliable. A cursory perusal of the evidence of the witnesses, this court is left unimpressed by the submissions advanced by Mr. Chaudhury learned counsel for the accused.

**10.** Indisputably, the quantity of contraband substances, allegedly recovered from the possession of the accused, is of commercial quantity. From the materials placed on record and also from the scanned copy of the learned Court below, this Court is unable to derive its satisfaction that there is no reasonable ground for believing that the accused is not guilty of the charges and that he will not commit similar offence in future, if enlarged on bail.

**11.** I have carefully gone through the case laws referred by Mr. Chaudhury. But, the ratios, laid down in the said cases, have to be restricted to its own fact, and

the same would not come into his aid.

**12.** It is fact that the accused is languishing in jail hazoot for more than 8 months. This is one of the grounds for filing this third bail application. The learned counsel for the accused also tried to persuade this court, by his submission, to consider the same. But, in view of the decision of the Hon'ble Supreme Court in the case of **NCB vs. Mohit Agarwal**, reported in [2022] ) **Supreme (SC) 619**, the length of detention is immaterial where commercial quantity of contraband substance is involved.

**13.** Under the above circumstances, this Court is of the opinion that this is not a fit case to grant the privilege of bail, under Section 439 of the Cr.P.C. to the accused. Accordingly, this bail application stands dismissed.

**14.** However, the learned Court below is directed to expedite the trial and conclude the same at the earliest possible time, without being influenced by any of the observation made herein above. The learned court below shall take recourse to the provision of Section 309(1) of the Cr.P.C., if necessary.

**15.** In terms of above, the bail application stands disposed of.

JUDGE

Comparing Assistant