

GAHC010098292023



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

Case No. : Bail Appln./1650/2023

NUR MAHAMMAD SK.,
S/O BACHHU SK.
R/OVILL- KHUDIMARI PART-II
P.S. GAURIPUR
DIST. DHUBRI, ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. S A AHMED

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE AJIT BORTHAKUR

ORDER

06.06.2023

Heard Mr. S.A. Ahmed, learned counsel 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

Nur Mahammad Sk. has prayed for grant of bail in connection with **Special Case No. 16/2023** pending in the Court of learned Addl. District & Sessions Judge, Dhubri (corresponding to **Gauripur P.S. Case No.259/2022**) under Section **22(c)** of the NDPS Act.

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

The case relates to recovery and seizure of 13.84 grams of suspected heroin from the possession of the FIR named accused persons namely, Nazimul Hoque, Ali Hussain and Anowar Hussain @Bihari.

It is noticed that the accused petitioner has been in judicial custody since 05.08.2022, that is, for 306 days.

A perusal of the case record along with the case diary, it is revealed that in course of further investigation into the case during search at the house of the present accused petitioner the police recovered and seized (1) 504 nos. of Pyeevon Spas Plus Capsules (2) 36 nos. of Eskuf Cough Syrup bottles (100 ml. each) and (3) 23 nos. of CoffereX Cough Syrup bottles (100 ml. each). The F.S.L., Assam has reported that the seized cough syrup bottles contained Codeine Phosphate and the capsules contained Tramadol. Therefore, prima facie, the seized contraband from the possession of the present accused petitioner amounted to commercial quantity under the N.D.P.S. Act.

The case record reveals that after completion of investigation finally the investigating officer submitted the charge-sheet against the present accused and 7(seven) others under Sections 22(c)/29 of the NDPS Act vide order, dated 12.01.2023. Thereafter, the learned trial Court has not been able to consider and frame the charges for non-appearance of one of the accused persons, who is on bail. Presently, the case is pending for appearance and consideration of

charges.

Having heard the learned counsel of both sides and consideration of the materials on the case record as well as the case diary, this Court is of the opinion that in view of the bar contained in Section 37 of the NDPS Act, the liberty of bail if granted to the accused petitioner, at the present stage, there is every chance of him indulging in illegal trade of drugs and as such, he is not entitled to be released on bail. The petitioner is not entitled to bail maintaining parity in the bail orders passed in favour of the co-accused persons due to different set of evidence peculiar to his case.

Accordingly, the bail application of the accused petitioner, namely Nur Mahammad Sk. stands **rejected**.

However, the accused petitioner is given liberty to file fresh bail application before the learned trial Court, if so advised, and if such application is filed, the same shall be considered and disposed of in accordance with law at an appropriate stage of trial of the case.

The learned trial Court shall make an endeavour to expedite the trial of the case if charges are framed avoiding unnecessary adjournments and publishing in advance a calendar of hearing.

This disposes of the bail application.

JUDGE

Comparing Assistant