

GAHC010133552023



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

Case No. : Bail Appln./2220/2023

SAHIDUL ISLAM @ SAIDUL ISLAM
S/O- BISHA SEKH, R/O- VILL- CHAMPUPARA, P.O. CHAMPUPARA BAZAR,
P.S. CHHAYGAON, DIST.- KAMRUP, ASSAM, PIN- 781136

VERSUS

THE STATE OF ASSAM
REP. BY P.P., ASSAM

Advocate for the Petitioner : MR. A SAYED

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE AJIT BORTHAKUR

ORDER

18.07.2023

Heard Mr. M. Mahanta, learned counsel for the accused petitioner. Also heard Mr. B.B. Gogoi, learned Addl. Public Prosecutor, Assam appearing for the State respondent.

By this petition under Section 439 Cr.P.C., the accused petitioner, namely

Sahidul Islam @Saidul Islam has prayed for grant of bail in connection with **Jalukbari P.S. Case No.302/2023** under Sections **21(c)/29** of the N.D.P.S. Act (corresponding to **G.R. Case No. 3624/2023**).

The case diary, as called for, is placed before the Court. The FSL report is not received.

The case relates to recovery and seizure of 1000 bottles of LEUCOF (Chlorpheniramine Maleate & Codeine Phosphate Syrup) from a Tata Yodha Pick Up vehicle bearing Registration No. AS-01NC-8730.

Mr. M. Mahanta, learned counsel for the accused petitioner submits that the accused petitioner was the registered owner-cum-driver of the said commercial vehicle bearing Registration No. AS-01NC-8730. According to Mr. Mahanta, on 22.05.2023, the accused's vehicle was hired by one Sahabuddin Ahmed of Bijay Nagar for the purpose of transportation of pharmaceutical items from Guwahati to his pharmacy at Bijay Nagar and accordingly, the accused petitioner transported the items contained in cartons from Machkhowa at Guwahati for delivery. However, at Satmile the police intercepted the vehicle and after search, found some cartons containing suspected N.D.P.S. drugs which he transported without knowledge along with other pharmaceutical items. Therefore, Mr. Mahanta submits that the accused petitioner had apparently no culpable mental state and as such, protected by Section 35 of the N.D.P.S. Act. Mr. Mahanta further submits that keeping in consideration of this vital aspect of the case of the accused petitioner, his bail application may be considered favourably.

Per contra, Mr. B.B. Gogoi, learned Addl. Public Prosecutor, submits that the case diary reveals sufficient prima facie material showing complicity of the

present accused petitioner in the commission of the alleged offence involving commercial quantity of drugs under the N.D.P.S. Act and as such, in view of the bar contained in Section 37 of the said Act and at the present stage of investigation, the bail application may not be accepted.

It is noticed that the accused petitioner has been in judicial custody since 24.05.2023, that is, for 56 days.

A perusal of the case diary along with the seizure memo it is prima facie revealed that the accused petitioner, who was the owner-cum-driver of the seized vehicle, with knowledge transported some pharmaceutical items along with the huge quantity of contraband mentioned in the seizure memo from Machkhowa, Guwahati to Bijay Nagar for delivery to one Sahabuddin Ahmed without any valid document. Therefore, it cannot conclusively be said at the present stage of investigation that the accused petitioner had no culpable mental state and as such, protected by the presumption contained in Section 35 of the N.D.P.S. Act. The investigation is yet to be completed. These findings are of course subject to the final outcome in investigation.

For the above stated reasons, the bail application of the accused petitioner stands **rejected**.

Return the case diary.

This disposes of the bail application.

JUDGE

Comparing Assistant