

GAHC010141702023



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

Case No. : Bail Appln./2259/2023

BASANTA DAS
S/O SRI ANIL DAS
R/O SEUJ NAGAR, RAJABARI
GARMUR, P.S. JORHAT,
DIST. JORHAT, ASSAM

VERSUS

THE STATE OF ASSM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. U K DEKA

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

25.07.2023

Heard Mr. U.K. Deka, learned counsel for the petitioner. Also heard Mr. D. Das, learned Addl. Public Prosecutor for the State who submits that the case diary which was called for, has not arrived.

2. This bail application under Section 439 Cr.P.C., 1973 has been preferred by

petitioner, namely, **Sri Basanta Das**, who has been arrested on 30.05.2023 (since 56 days) in connection with Jorhat PS Case No. 265/2023 under Sections 21(b)/25/29 of the NDPS Act, 1985.

3. The accusation in this case is that one Bhagyashree Gogoi WSI (P) of Cinamara Outpost had lodged an FIR before the Officer in-charge of Jorhat Police Station, *inter alia*, alleging that on receipt of an information through reliable sources that some drug peddlers are involved in the illicit trafficking of narcotics drugs and they are likelihood to take the said consignment before 6.00 PM on 29.05.2023. One search operation was conducted and the present petitioner, namely, **Sri Basanta Das** was intercepted while he was going one Jupiter Scooter bearing Registration No. AS 03-AH-1809 and when he was searched, suspected heroine weighing 5 grams was recovered from his possession. On receipt of the said FIR, Jorhat P.S. Case No. 265/2023 was registered under Sections 21(b)/25/29 of the NDPS Act.

Though the case diary, which was called for in connection with this case has not arrived, however, learned counsel for the petitioner submits that in the instant case, the petitioner has been languishing behind the bar since last 30.05.2023, i.e. since 56 days and the quantity of suspected heroine which was seized from his possession was only of 5 grams and therefore this case ought to have been registered under Section 21(a) instead of 21(b) as the provisions of 21(b) of the NDPS Act, 1985 is applicable only when the contravention involved quantity, lesser than commercial quantity but greater than small quantity, and in the instant case as the quantity of heroine which was seized is only 5 grams which is of small quantity, it appears that this instant case has been wrongly registered under section 21(b) and it ought to have been registered under section 21(a) of the NDPS Act, 1985.

4. The learned Addl. Public Prosecutor opposed the grant of bail to the present petitioner.

5. Considering the quantity of suspected heroine seized from the possession of the present petitioner and the period of detention already undergone by the present petitioner, i.e. 56 days, his further custodial detention does not appear to be necessary for fair completion of the investigation of Jorhat PS Case No. 265/2023.

6. In view of above, the petitioner, **Sri Basanta Das**, is allowed to go on bail of Rs.20,000/- (Rupees twenty thousand) only with one surety of like amount to the satisfaction of learned Special Judge, Jorhat with the following conditions :-

(1) That he shall co-operate with the investigating office of Jorhat P.S. Case No. 265/2023;

(2) After being released on bail, within a period of 15 days from the date of release, the petitioner shall take treatment for rehabilitation against the drug addiction and as a proof of the same he shall submit the relevant documents before learned Special Judge, Jorhat in Jorhat PS Case No. 265/2023;

(3) The petitioner shall not indulge in the offence similar to that with which he has been charged in the instant case.

7. With the above observation, the instant bail application stands disposed of.

JUDGE

Comparing Assistant