

GAHC010168572023



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

Case No. : Bail Appln./2708/2023

ABDUR RAHMAN AND 2 ORS
S/O NAZIR AHMED
R/O VILL-SORA, THONGTHABI LEIKAI
P.O. AND PS. KAKCHING, DIST. KAKCHING MANIPUR, PIN-795103.

2: SRI MAYANGLAMBAM JIBAN MEETEI
S/O MAYANGLAMBAM ACHOU MEETEI
R/O VILL- MALOM TULYAIMA AWANG MALOM
P.O. AND P.S. NAMBOL
DIST. IMPHAL WEST
MANIPUR
PIN-795134

3: MD. ALIMUDDIN
S/O MD. JALALUDDIN
R/O VILL- SONA
MAMANG LEIKAI
P.O. AND P.S. KAKCHING
DIST. KAKCHING
MANIPUR
PIN-79510

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MS. J PAUL

Advocate for the Respondent : PP, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN
ORDER**

16.10.2023.

1. Heard Ms J. Paul, learned counsel for the accused. Also heard Mr. K.K. Das, learned Addl. P.P., Assam, for the State respondent.
2. This application under Section 439 of the Code of Criminal Procedure, 1973, is preferred by three accused persons, namely, (i) Abdur Rahman, (ii) Shri Mayanglambam Jiban Meetei (iii) Md. Alimuddin who have been languishing in jail since 08.02.2022, in connection with the Doboka P.S. Case No.57/2022, corresponding to Special Case No.37(H)/2022, under Section 21(C)/23(C)/27A/29 of the NDPS Act, pending before the learned Special Judge, Hojai, for grant of bail.
3. The aforementioned case has been registered on the basis of an FIR, lodged by SI Rajib Singha of Doboka P.S., on 07.02.2022.
4. The essence of allegations, made in the said FIR dated 07.02.2022, is that acting on a tip off, the informant and other police staff have intercepted one Bus, bearing No. AS 02 U6082 and three persons, namely, (i) Abdur Rahman, (ii) Shri Mayanglambam Jiban Meetei (iii) Md. Alimuddin and recovered 100 numbers of blue coloured plastic packets containing 200 numbers of pink coloured Tablets, suspected to be Yaba Tablets and seized the same in presence of witnesses, preparing seizure list.
5. Ms. J. Paul, learned counsel for the accused, submits that the accused persons are behind the bar for last one year nine months, as they were arrested on 07.02.2022. Ms. Paul further submits that the case has already been charge sheeted, and as many as 10 witnesses have been examined so far out of 14 witnesses and the recovery was doubtful and the mandatory provisions of section 50 of the NDPS Act is not followed here in this case and that the accused will appear before the court below on each and every date and therefore, it is contended to allow the petition. Ms. Paul also referred to a decision of Delhi High Court in **Emeka Emmanuel vs. The State** (Bail Application No. 1231/2022) to contend that the accused are entitled to bail when section 50 of the NDPS Act is not complied with.
6. On the other hand, Mr. K.K. Das, the learned Addl. P.P., Assam, submits that 200 Yaba Tablets were recovered from the possession of the accused persons and the samples collected from the same

gave positive test for Metamphetamine and that trial is at fag end and that all the accused hails from Manipur and if enlarged on bail at this stage it will be difficult to procure their attendance and consequently trial will be delayed. Mr. Das further submits that the quantity of contraband substance so recovered from the accused persons are of commercial quantity, and the rigor of Section 37 of the NDPS Act is applicable in the present case and the accused could not satisfy the requirement of the said section and therefore, Mr. K.K. Das has 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 record and also perused the scanned copy of the case record, received from the learned Court below.

8. It appears that the I.O. has already completed investigation and laid charge sheet against the accused and the learned Court below has framed charge against the accused under Section 21(C)/23(C)/27A/29 of the NDPS Act. It also appears that the learned court below has framed charges against the accused persons under sections 21(C)/23(C)/27A/29 NDPS Act and examined as many as 10 witnesses out of 14 witnesses cited in the charge sheet.

9. It is not in dispute that the quantities of the contraband substances, so recovered from the possession of the accused persons are of commercial quantity. And since the quantity of the contraband substance recovered from the possession of the accused is of commercial quantity, the accused persons have to satisfy the twin conditions of Section 37 of the NDPS Act that there is no reasonable ground to believe that: the accused is not guilty of the offence and that he is not likely to commit any offence while on bail.

10. But, from the materials on record, specially from the scanned copy of the record received from the learned court below also from the submission of learned counsel for the accused, this Court is unable to derive its satisfaction that there exists any reasonable ground for believing that the accused is not guilty of the offence and that he is not likely to commit any offence, while on bail.

11. It also appears that all the accused persons hails from Manipur and since the trial is at the fag end, enlarging them on bail at this stage, will affect speedy disposal of the case. Moreover, it will also be difficult to procure their attendance also.

12. Though, Ms. Paul, the learned counsel for accused submits that section 50 of the NDPS Act is not complied with, yet having gone through the record of the learned court below, this court is unable

to record concurrence with the submissions of Ms. Paul. Moreover, in view of a Constitutional bench decision of Hon'ble Supreme Court in **State of Punjab vs. Baldev Singh** reported in **(1999)6 SCC 172**, compliance of the provisions of section 50 of the NDPS Act have to be determined by the court on the basis of the evidence led at the trial. It is further held in the said case that Finding on that issue, one way or the other, would be relevant for recording an order of conviction or acquittal. Without giving an opportunity to the prosecution to establish, at the trial, that the provisions of section 50 and, particularly, the safeguard provided therein were duly complied with, it would not be permissible to cut short a criminal trial. It is to be mentioned here that in the instant case trial is going on and some witnesses are yet to be examined and in that view of the matter it would be improper to arrive at a finding in respect of compliance or non compliance of section 509 of the NDPS Act.

13. In view of above, 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 and therefore, the same stands dismissed.

14. However, the learned Court below is directed to expedite the trial and conclude the same at the earliest possible time, preferably within a period of three months from today, and if necessary, by taking recourse of the provision of Section 309(1) of the Cr.P.C.

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

JUDGE

Comparing Assistant