

GAHC010178382023



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

Case No. : Bail Appln./2895/2023

ALI AHMED
S/O- BABU MIAH, R/O- VILL.- LALONG PART-II, P.S. LAKHIPUR, DIST.
CACHAR, ASSAM

VERSUS

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

Advocate for the Petitioner : MR. A AHMED

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA

ORDER

Date : 09.10.2023

Heard Mr. A. Ahmed, learned counsel for the petitioner. Also heard Mr. B. B. Gogoi, learned Additional Public Prosecutor for the State respondent.

2. This is an application under Section 439 of the Code of Criminal Procedure,

1973, praying for grant of bail to the accused/petitioner, who has been languishing in jail since 03.07.2022 in connection with NDPS Case No. 75/2022, arising out of North Guwahati P.S. Case No. 68/2022, under Sections 419/468/471/420 of the Indian Penal Code *read with* Section 22(C)/29 of the NDPS Act.

3. Scanned copy of the LCR has been received and I have perused the same.

4. It is submitted by the learned for the petitioner, Mr. A. Ahmed, that the allegation brought against the present petitioner is that the drugs were seized from the possession of the present petitioner while he went to the house of one Barul Alom from where the recovery of the contraband was made by the investigating authority. He further submitted that the case is registered under Section 22(C) of the NDPS Act, but there cannot be any complete bar under Section 37 of the NDPS Act to grant bail to the accused persons in case of commercial quantity. In that context, he also cited a decision of this Court passed in Bail Appln./2090/2022, dated 27.09.2022. Further, he submitted that the another co-accused, namely, Mohammad Khan, has already been granted bail by the learned Court below and hence, the case of the present petitioner also can be considered in the same footing and on the ground of parity, he may also be enlarged on bail.

5. In this context, the learned Additional Public Prosecutor, Mr. Gogoi, has submitted that there are sufficient materials available in the Case Diary as well as in the case record against the present petitioner, wherefrom it reveals that

the case is *prima facie* established against him. More so, there is no material from where it can be held that the accused is not guilty under Section 22 (C) of the NDPS Act. He further submitted that the rigor of Section 37 NDPS Act is applicable in the instant case as the case has already been Charge-Sheeted against the present accused/petitioner along with the others. He further submitted that there are 6 (six) numbers of witnesses and the prosecution has already examined 4 (four) numbers of witnesses including the informant and hence, there is a probability of deciding the case within a short period. Accordingly, the learned Additional Public Prosecutor raised objection and submitted that this is not a fit case where the accused can be granted with the bail.

6. After hearing the submissions made by the learned counsels for both sides, I have perused the scanned copy of the case record and it is seen that the case is at the stage of evidence and already 4 (four) numbers of witnesses have been recorded by the learned Court below. More so, on perusal of the evidences as well as the Case Diary, it is seen that there is no reasonable ground to believe that the accused is not guilty under Sections 22(C)/29 of the NDPS Act as alleged against him and also there is no material to held that there is no probability of committing the offence of the same nature if he is enlarged on bail. More so, the rigor of Section 37 is applicable in the present case.

7. Section 37 of the NDPS Act reads as under:

"37. Offences to be cognizable and non-bailable —

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974)—

(a) every offence punishable under this Act shall be cognizable;

(b) no person accused of an offence punishable for 2[offences under section 19 or section 24 or section 27A and also for offences involving commercial quantity] shall be released on bail or on his own bond unless—

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

(2) The limitations on granting of bail specified in clause (b) of sub-section (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force, on granting of bail."

8. So, from the entire discussions made above, it is seen that only on the ground of parity, the present petition cannot be considered and there is also no ground to consider that the accused/petitioner is not guilty under Sections 22(C)/29 of the NDPS Act. Further, from the case record, it is seen that the case is at the evidence stage and there is every probability of the disposal of the case within a short period.

9. Accordingly, considering all above aspects of the case, I find that this is not a fit case where the accused can be allowed to go on bail at this stage and accordingly, the same stands dismissed. However, the learned Special Judge is hereby directed to dispose of the matter as early as possible, preferably within a period of 6 (six) months from today.

10. With the above observation, this bail application stands disposed of.

JUDGE

Comparing Assistant