

GAHC010184412023



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

Case No. : Bail Appln./2954/2023

PIKU DAS
SON OF LATE BALIN DAS, RESIDENT OF COMMISSIONER ROAD UNDER
JORHAT POLICE STATION IN THE DISTRICT OF JORHAT (ASSAM)

VERSUS

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

Advocate for the Petitioner : MR. U CHOUDHURY

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI

ORDER

Date : 04.10.2023

Heard Mr. U. Choudhury, learned Legal Aid Counsel for the
accused-petitioner. Also heard Mr. B. Sarma, learned Additional Public
Prosecutor for the State.

This is an application made under **Section 439 Cr.P.C.,**

seeking bail by the accused-petitioner, namely, **Piku Das**, in connection with **Special (NDPS) Case No. 48/2021** under Section **21(b)/27-A of NDPS Act, 1985** arising out of **Jorhat P.S. Case No. 1279/2021** pending in the court of learned Speical Judge, Jorhat.

The learned Legal Aid Counsel for the petitioner submits that the accused/petitioner has been detained in custody since 03.06.2021. It is also submitted that nine witnesses were examined before the learned trial court. Except P.W.1, no other witnesses has stated anything regarding involvement of the present petitioner in connection with the alleged offence.

It is also submitted by the learned Legal Aid Counsel for the accused/petitioner that when P.W. 1 searched the body of the petitioner, he found 7(seven) numbers of containers. At the time of search, P.W.1 did not follow the procedure as per provision of Section 50 of NDPS Act.

It is further submitted by the learned Legal Aid Counsel for the petitioner that out of 7(seven) containers, only one container was opened as per evidence of P.W.1 which was sent to FSL for chemical examination. As per FSL report, one sealed envelope having a closed polythene packet containing 1.5 g light brown coloured power substance was received by Forensic Science, Kahilipara, Guwahati. As the other containers were not opened, so, one container containing 1.5 gm suspected heroin was sent for chemical examination which gave positive test for heroin but 1.5 gm of heroin is considered to be small

quantity for which Section 21(b) is not attracted here in this case.

On the other hand, learned Addl.P.P. has submitted that considering the background of the case and period of detention of the petitioner, bail may be considered.

I have considered the submissions made by the learned counsel for the parties. I have also perused the LCR including the statement of the witnesses recorded so far.

From the evidence, it reveals that P.W.1 stated in his cross-examination that at the time of seizure, he opened only one container and other containers were not opened by him. He did not know what was in the other containers. At the time of seizure vide M. Ext. 1(1) to 1(7), he opened only one container and rest were not opened by him. He could not say what was there in other containers which he did not open at the time of seizure. The other witnesses did not say anything about the seizure of such contraband from the possession of the present petitioner.

The petitioner is in custody since 03.06.2021 and trial is proceeding. He cannot be kept in custody as a matter of punishment. Further, he is not a habitual offender as no previous criminal history of accused has been disclosed by police. Every person is presumed to be innocent until the accusation is proved against him/her. Bail is rule and its refusal has to be in exceptional circumstances.

Accordingly, the accused-petitioner, named above, shall be released on bail in connection with **Special (NDPS) Case No.**

48/2021 under Section **21(b)/27-A of NDPS Act, 1985** arising out of **Jorhat P.S. Case No. 1279/2021** pending in the court of learned Speical Judge, Jorhat, on furnishing bail bond of **Rs.30,000/-** with **two suitable sureties** of the like amount, to the satisfaction of learned Special Judge, Jorhat.

The direction for bail is further subject to the condition that the accused-petitioner:

(a) shall not leave the territorial jurisdiction of learned Special Judge, Jorhat., without prior written permission from him/her;

The learned Special Judge, Jorhat is at liberty to impose any condition(s) as it deems fit and proper at the time of releasing the accused/petitioner on bail to procure his attendance during trial.

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

JUDGE

Comparing Assistant