

GAHC010205492023



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

Case No. : Bail Appln./3232/2023

RUPCHAND ALI AHMED @ RATUL
S/O ISMAIL HUSSAIN
R/O H/NO. 72, UDAYANAGAR
DAKHINGAON, P.S. DISPUR,
DIST. KAMRUP (M), ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. D SARMAH

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

11.12.2023

1. Heard Mr. Z. Kamar, learned Senior Counsel, assisted by Mr. D. Sarmah, learned counsel for the petitioner. Also heard Mr. B. B. Gogoi, learned Additional Public Prosecutor representing the State of Assam.

2. This application under section 439 of the Code of Criminal Procedure, 1973 has been filed by the petitioner, namely, Rupchand Ali Ahmed @ Ratul, who has been detained behind the bars since 28.07.2023 (for last 136 days) in connection with Hajo P.S. Case No. 490/2023 under Section 22C/29 of the NDPS Act, 1985 read with Section 28A of the Drugs & Cosmetics Act, 1940.

3. The gist of accusation in this case is that on 28th July, 2023, one Dorothy Bhardwaj, S.I. of Police lodged an FIR before the Officer-in-Charge of Hajo Police Station, inter-alia, alleging that during a Naka Checking duty which was conducted at Guwahati-Barpeta Road, in front of Dadara Police Outpost, one WagonR bearing Registration No. AS-01/EF-0645 was intercepted while it was moving towards Hajo from Guwahati and during search operation one brown carton was found inside the said WagonR, wherein, 8(eight) lot of TRIMEX Cough Syrup bottles, each lot containing 20 100 ml bottles and each containing Codeine Phosphate and another purple coloured bag containing 50(fifty) boxes of SAMPFX+ Capsules containing Tramadol were recovered therefrom.

4. It is further alleged in the FIR that the occupants of the said Maruti WagonR Car, namely, Ahedur Rahman and Afzalur Rahman were apprehended and during interrogation they disclosed that the said contraband was supplied to them by the present petitioner.

5. Learned Senior Counsel for the petitioner has submitted that the petitioner is in no way involved in the offence alleged against him in the FIR and nothing has been recovered from his possession.

6. It is further submitted by the learned Senior Counsel for the petitioner that apart from the statement of the co-accused who were arrested

on the spot and from whose possession the contraband was recovered, there is nothing on record to implicate the present petitioner in the instant case.

7. It is also submitted by the learned Senior Counsel for the petitioner that the contraband recovered in the instant case are manufactured drugs which have batch numbers and other details which can be used to easily track as regards who is the manufacturing brand of the said drugs and from where the said materials were transported from. However, it is submitted by the learned Senior Counsel for the petitioner that there is no material against the present petitioner except the statement of the co-accused persons.

8. In this regard, the learned Senior Counsel for the petitioner has cited a ruling of Hon'ble Apex Court in "***Surinder Kumar Khanna Vs. Intelligence Officer Directorate of Revenue Intelligence***" (order dated 31.07.2018) passed in Criminal Appeal No. 949/2023, wherein it was observed as follows:-

"14. In the present case it is accepted that apart from the aforesaid statements of co-accused there is no material suggesting involvement of the appellant in the crime in question. We are thus left with only one piece of material that is the confessional statements of the co-accused as stated above. On the touchstone of law laid down by this Court such a confessional statement of a co-accused cannot by itself be taken as a substantive piece of evidence against another co-accused and can at best be used or utilized in order to lend assurance to the Court. In the absence of any substantive evidence it would be

inappropriate to base the conviction of the appellant purely on the statements of co-accused. The appellant is therefore entitled to be acquitted of the charges leveled against him. We, therefore, accept this appeal, set aside the orders of conviction and sentence For example: [State vs. Nalini](#), (1999) 5 SCC 253, paras 424 and 704 and acquit the appellant. The appellant shall be released forthwith unless his custody is required in connection with any other offence."

9. The learned Senior Counsel for the petitioner has also submitted that the petitioner has been detained behind the bars for last 136 days and had there been any materials against him, the Investigating Officer could have collected the same by this time and merely on the basis of the statement of the co-accused recorded under Section 161 of the Code of Criminal Procedure, 1973 which is not admissible as evidence during the trial, there is no justification for his continued detention in this case, and therefore, there is no reasonable ground for believing that he has been guilty of the offence under Section 22C/29 of the NDPS Act, 1985 as alleged in the instant case.

10. Learned Senior Counsel for the petitioner has also cited a ruling of the "High Court of Punjab & Haryana in "**CRM No. 1459/2021**" dated 16.08.2022, wherein, the petitioner of that case was also placed under similar circumstances like that of the present petitioner and where there was nothing against the said petitioner against the statement of the co-accused and the Hon'ble Punjab & Haryana High Court was pleased to grant the bail to the said petitioner on the ground that as there is no evidence against the petitioner

except disclosure statement of the co-accused and it was held that embargo of Section 37(1)(b) of the NDPS Act, 1985 will not be applicable.

11. On the other hand, learned Additional Public Prosecutor has opposed the grant of bail to the present petitioner on the ground that the contraband seized in this case is of commercial quantity and therefore, the embargo of Section 37 of the NDPS Act, 1985 would be applicable in the instant case.

12. Learned Additional Public Prosecutor has also submitted that as both the co-accused have specifically stated that they have procured the recovered drugs only from the present petitioner hence, this is not a case where there is no reasonable ground to believe that the petitioner has been guilty of the offence alleged against him.

13. I have considered the submissions made by learned counsel for both the sides and have perused the materials available on record including the case diary of Hajo P.S. Case No. 490/2023 which was called for in connection with this case.

14. It is apparent from the record that in the instant case, recovery of seized contraband was not made from the present petitioner and he has been implicated in this case only on the basis of the statement of the co-accused from whose possessions the seized contraband were recovered.

15. It is also not in dispute that in view of the rulings of Hon'ble Apex Court in various judgments including the judgment cited by learned Senior Counsel for the petitioner that the statement of the co-accused in itself cannot be the basis of conviction of a co-accused in NDPS Case unless there is some other material in the offence alleged against him.

16. It is also alleged that in this case, the seized contraband are manufactured drugs including SAMPFX+ Capsules and Codeine Phosphate cough syrup where batch numbers and other details are provided in the bottles/stripes/cartons itself which may help to locate the manufacturer of the said drugs and which could have helped the Investigating Officer to track as to from where the present drugs had moved and to whom. However, inspite of the fact that the petitioner has been detained behind the bars for last 136 days, there is nothing in the case diary except the statement of the two co-accused from whose possession the seized contraband was recovered. As the said disclosure statement in itself is not admissible as an evidence against the present petitioner in absence of any other materials to implicate him in the offence alleged against him in the instant case, this Court is constrained to hold that at this stage, even after 136 days of detention of the present petitioner, there is no admissible evidence on record to come to the conclusion that the present petitioner has been guilty of the offence charge alleged against him. Rather for the purpose of consideration of this bail application, this Court is of the considered opinion that there are reasonable grounds for believing that the present petitioner is not guilty of the offence alleged in the instant case. Further, as there is no material to show that there is any pending NDPS Case or for that matter, any other case record against the present petitioner, there is also no material to come to the conclusion that if he is released on bail, the petitioner is likely to commit any offence. Hence, this Court is of the considered opinion that the embargo of Section 37(1)(b) of the NDPS Act, 1985 is not applicable in case of the present petitioner in the instant case.

17. For the aforesaid reasons, the above named petitioner is hereby directed to go on bail of Rs. 30,000/- with one suitable surety of like amount to

the satisfaction of the learned Special Judge, NDPS, Kamrup(Amingaon) with the following conditions that:-

(i) the petitioner shall co-operate with the Investigating Officer of Hajo P.S. Case No. 490/2023 while on bail and shall appear before the Investigating Officer as and when so required for the sake of fair completion of the investigation of the case;

(ii) the petitioner shall not directly or indirectly make any inducement, threat or promise to any of the listed witnesses or any other persons who may be acquainted with the facts of the case so as to dissuade such person from disclosing such facts to the Investigating Officer or to any Police or Court; and

(iii) the petitioner shall not indulge in any offence similar to that for which he has been accused in this instant case.

18. With the above observations, this bail application is hereby disposed of.

19. Send back the case diary.

JUDGE

Comparing Assistant