

GAHC010208622023



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

Case No. : Bail Appln./3303/2023

MAINUL HAQUE
S/O- LATE MANIR UDDIN, R/O- MOIRABARI, WARD NO 9, P.S. MOIRABARI,
PIN- 782126, DIST.- MORIGAON, ASSAM

VERSUS

THE STATE OF ASSAM
REPRESENTED BY PUBLIC PROSECUTOR

Advocate for the Petitioner : MR B P BORAH

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

21.12.2023

- 1.** Heard Mr. B.P. Borah, learned counsel for the petitioner. Also heard Mr. D. Das, learned Additional Public Prosecutor, appearing for the State of Assam.
- 2.** This application under section 439 of the Code of Criminal Procedure, 1973 has been filed by the petitioner, namely, Mainul Haque, who has been detained behind the bars since 22.01.2023, for the last 334 days, in connection

with Special (NDPS) Case No. 36/2023 corresponding to Moirabari P.S. Case No. 18/2023 pending before the Court of learned Sessions Judge, Morigaon.

3. The gist of accusation in this case is that on 21.01.2023, one Mandakini Devi, S.I. of Police had lodged an FIR before the Officer-In-Charge of Moirabari Police Station, *inter-alia*, alleging that on receipt of secret information through reliable sources that the petitioner is selling banned cough syrups from his house and he has stored a big consignment of banned narcotic drugs in his house, a search operation was conducted and during the search operation one white colour plastic bag was found which was kept hidden under the garbage at the backside of the house of the present petitioner and inside the said bag 68 numbers of bottles of 100 ml each of Cofson CD cough syrup of Codeine Phosphate were found. Along with the said Codeine Phosphate, 6 strips of Nitrazepam tablets were also found. On receipt of the said FIR, Moirabari P.S. Case No. 18/2023 was registered and an investigation was initiated. After completion of the investigation, charge-sheet was laid against the present petitioner under Section 21(c)/22(b)/25 of the NDPS Act, 1985. On the basis of the said charge-sheet, NDPS Case No. 36/2023 was registered. The petitioner was, in the meanwhile, arrested on 22.01.2023 and he faced the trial remaining in custody. On 07.08.2023, charges were framed against the present petitioner and till now 3 witnesses have already been examined in the case.

4. Learned counsel for the petitioner has submitted that the seized contrabands were not found from his conscious possession as the same were found from the back side of his house concealed in a garbage and therefore, it is submitted that Section 21 of the NDPS Act, 1985 is not applicable in this case.

5. Learned counsel for the petitioner has also submitted that the provision of Section 52A of the NDPS Act, 1985 was not complied with in this

case as the sample was not collected as per the mode prescribed in the Standing Order No. 1 of 89 and therefore, for non-compliance of provisions of Section 52A of the NDPS Act, 1985, the petitioner is entitled to be released on bail.

6. It is further submitted that the petitioner has been detained behind the bars since 22.01.2023, i.e. for last 334 days, and the said period of detention is long enough to override the embargo of Section 37 of the NDPS Act, 1985 and therefore, he submits that only on the ground of prolonged incarceration, the petitioner is entitled to be released on bail in this case.

7. On the other hand, learned Additional Public Prosecutor has submitted that the period of detention of 334 days detention in a case involving commercial quantity of contraband may not be regarded as long enough period to override the embargo of Section 37 of the NDPS Act, 1985.

8. As regards the submissions of the learned counsel for the petitioner regarding non-compliance of the provision of Section 52A of the NDPS Act, 1985, learned Additional Public Prosecutor submits that *prima-facie* there is nothing to show that there is non-compliance of Section 52A of the NDPS Act, 1985 and this plea is a matter to be taken for consideration only during trial of the case.

9. Regarding the submissions made by learned counsel for the petitioner that the contraband was not found from the conscious possession of the present petitioner, it is submitted by the learned Additional Public Prosecutor that all the seizure witnesses have stated before the Investigating Officer that the seized contrabands were found from the premises of the present petitioner wherein, it was concealed in the backside of the house of the present petitioner under the garbage and therefore, he vehemently opposed the grant of bail to the present

petitioner.

10. I have considered the submission made by learned counsel for both the sides and have perused the scanned copy of the case record of NDPS Case No. 36/2023.

11. On perusal of the materials available on record, including the scanned copy of the case record of Moirabari P.S. Case No. 18/2023, it appears that the seized contraband in this case was found in a white coloured plastic bag which was found hidden under the garbage at the backside of the house of the present petitioner and all the single witnesses have also stated before the Investigating Officer that the prohibited contraband was found on the back side of the house of the present petitioner and not inside the premises of his house.

12. On perusal of the rough sketch map prepared by the Investigating Officer during investigation, it appears that there are many other houses near the house of the present petitioner, namely the house of Siddique Ahmed, the house of Nurzul Haque and the house of Matibur Rahman. However, there is no material to suggest as to whether it was the present petitioner who had concealed the seized contraband under the garbage.

13. The submissions of learned counsel for the petitioner that the seized contraband was not found from the possession of the present petitioner appears to have logic as unless there is something to link the petitioner with the seized contraband merely finding of prohibited drugs outside the house of the present petitioner, that to on the back side of the house under the garbage is not sufficient to come to a finding that there are reasonable grounds to believe that the petitioner is guilty of the offence under Section 21(c)/22(b) of the NDPS Act, 1985.

14. Though the Trial Court has framed the charges under Section

21(c)/22(b) of the NDPS Act, 1985, wherein, it has been mentioned that the seized contraband was recovered from the house premises of the present petitioner. However, there is no material on record to show that it was seized from the house premises, rather it was seized from the back side of the house of the present petitioner from garbage and as stated hereinbefore there is no material to link the present petitioner with the seized contraband.

15. The only statement available on record suggesting that the seized contraband was found from the premises of the present petitioner is the statement of the petitioner himself recorded under Section 161 of the Code of Criminal Procedure, 1973 which does not have any evidentiary value. Even in his own statement also, the present petitioner has made no confession that it was him who had concealed the seized contraband under the garbage from where it was recovered. Under the above circumstances, for the limited purpose of consideration of the bail of the present petitioner, this Court is of the considered opinion that there are reasonable grounds for believing that the present petitioner is not guilty of the offence under Section 21(c) of the NDPS Act, 1985 and as there is no material to suggest that he is likely to commit any offence while on bail, this Court is also of the considered opinion that there are reasonable grounds for believing that the petitioner is not likely to commit any offence while on bail.

16. The petitioner has been detained behind the bars for last 334 days and for the reasons mentioned hereinbefore, his further custodial detention is not justified.

17. In view of the above, the petitioner, namely, Mainul Haque is hereby allowed to go on bail of Rs. 30,000/- with a suitable surety of like amount subject to the satisfaction of the learned Special Judge, Morigaon with following

conditions that:-

- i. The petitioner shall regularly appear before the Trial Court in Special NDPS Case No. 36/2023 and shall co-operate in his trial; and
- ii. The Trial Court may impose any additional condition for bail if it deems fit to do so.

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

19. Send back the case diary.

JUDGE

Comparing Assistant