

GAHC010217862023



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

Case No. : Bail Appln./3470/2023

RAMESH CH. BISWAS
S/O- PARESH CH. BISWAS, VILL- GAREMARI PATHAR, P.S. BARPETA, DIST.-
BARPETA, ASSAM

-VERSUS-

THE STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

Advocate for the Petitioner : MR. R ALI

Advocate for the Respondent : PP, ASSAM

- B E F O R E -

HON'BLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

20.12.2023

Heard Mr. R. Ali, learned counsel for the petitioner. Also heard Mr. K.K. Parashar, learned Additional Public Prosecutor, Assam.

2. This application under Section 439 of the Code of Criminal Procedure, 1973 has been filed by the petitioner, namely, Ramesh Ch. Biswas, who has been detained behind the bars since 10.07.2023 (for last 173 days) in

connection with Special (NDPS) Case No.61/2023 arising out of Howly P.S. Case No.125/2023, under Sections 21(c)/29 of the NDPS Act, 1985 pending before the Court of learned Special Judge, Barpeta.

3. The gist of accusation in this case is that on 10.07.2023, one Niranjan Das had lodged an FIR before the Officer-In-Charge of Howly Police Station, *inter-alia*, alleging that the present petitioner along with one Afaz Ali of Ambari under Howly Police Station have been running illegal business of drugs and accordingly, the present petitioner was apprehended who took the police to the house of co-accused Afaz Ali from where 30 Nos. of soap cases containing Heroin was recovered. The weight of the seized Heroin was found to be 939.88 gram along with plastic soap cases.

4. On receipt of the said FIR, Howly P.S. Case No.125/2023 was registered under Sections 21(c)/29 of the NDPS Act, 1985 and an investigation was initiated. Ultimately, after completion of the investigation, the charge-sheet was laid on 29.09.2023 against 8(eight) accused persons including the present petitioner under Sections 21(c)/29 of the NDPS Act, 1985.

5. Learned counsel for the petitioner has submitted that out of the 8(eight) charge-sheeted accused persons, except the main accused, namely, Afaz Ali, all other accused persons are on bail.

6. Learned counsel for the petitioner has further submitted that the petitioner is no way involved in the offence alleged in the FIR as well as in the charge-sheet as nothing was seized from his possession and the only incriminating materials against the present petitioner are the statements of the co-accused. It is also submitted by the learned counsel for the petitioner that the petitioner had only shown the residence of the main accused Afaz Ali to the police and apart from that, he does not have any role in the instant case.

7. Learned counsel for the petitioner has cited ruling of the Apex Court in the case of “***State by (NCB) Bengaluru vs. Pallulabid Ahmad Arimutta & Anr.***”, reported in **(2022) 12 SCC 633** as well as in the case of “***Tofan Singh Vs. State of Tamil Nadu***”, reported in **(2021) 4 SCC 1**, wherein it was held that the confessional statement recorded under Section 67 of the NDPS Act is inadmissible in evidence and the value of such confessional statement shall remain so i.e. inadmissible even at the stage of consideration of bail.

8. On the other hand, Mr. K.K. Parashar, learned Additional Public Prosecutor, Assam has submitted that the co-accused have implicated the present petitioner in this case and have made statements that the present petitioner used to indulge in the illegal business of prohibited drugs in Barpeta area.

Learned Additional Public Prosecutor has further submitted that the petitioner was arrested in connection with another case involving prohibited drugs.

9. On this submission of the learned Additional Public Prosecutor, learned counsel for the petitioner has submitted that earlier the petitioner was falsely implicated in a case involving contraband of intermediate quantity in which the charges framed against the present petitioner in Special (NDPS) Case No.17/2023 under Sections 21(b)/29 of the NDPS Act. However, by judgment and order dated 01.12.2023 passed by learned Sessions Judge in the said case, the present petitioner has been acquitted by the learned Trial Court.

10. I have considered the submissions made by learned counsel for both the sides and have perused the scanned copy of the case diary of Howly P.S. Case No.125/2023 and the scanned copy of the case record of Special (NDPS) Case No.61/2023 pending before the Court of learned Sessions Judge, Barpeta and also the rulings cited by learned counsel for the petitioner.

11. Apart from the statement of the co-accused, there is no other material on record which implicates the present petitioner in the seizure of 939.88 gram of the Heroin seized in this case. It appears from the ruling cited by learned counsel for the petitioner that the confessional statement recorded under Section 67 of NDPS Act will remain inadmissible in law and therefore, the statements of the co-accused against the present petitioner may not be a basis to come to the conclusion regarding the involvement of the present petitioner in the offence alleged in the FIR.

Therefore, in this case, as there is nothing except the statement of the co-accused as well as the accused himself, for the purpose of consideration of this bail application, this Court is of the considered opinion that there are reasonable ground to believe that the petitioner is not guilty of offence alleged against him in this case. Therefore, the embargo of first part of Section 37 of the NDPS Act is not applicable in the instant case. As regards the possibility that the petitioner is likely to commit offence while on bail though learned Additional Public Prosecutor has pointed that the present petitioner was arrested in connection with similar offence, however, in view of the fact that in that case, the petitioner has been acquitted by judgment and order dated 01.12.2023 passed by learned Sessions Judge in Special (NDPS) Case No.17/2023, it can be said that there is no likelihood of commission of offence of similar kind by the petitioner if he is released on bail.

12. In view of the facts and circumstance stated above, this Court is of the considered opinion that the embargo of Section 37 of the NDPS Act is not applicable in the case of the present petitioner. As except the main accused, namely Afaz Ali, all other accused persons are released on bail and as the embargo of Section 37 is not applicable to the case of the present petitioner.

13. For the reasons mentioned hereinabove, the petitioner, namely, Ramesh Ch. Biswas, is allowed to go on bail of Rs.50,000/- with 2(two) sureties of like amount, subject to the satisfaction of the learned Sessions Judge, Barpeta with the following conditions:-

- (i) That the petitioner shall not leave the territory and jurisdiction of the learned Sessions Judge, Barpeta without prior leave from him.
- (ii) That the petitioner shall not directly or indirectly make any inducement, threat or promise to any person who is acquainted with the facts of this case so as to dissuade such person from disclosing any fact against him or deposing against him in the Special NDPS Case No.61/2023 pending against the petitioner before the learned Sessions Judge, Barpeta.
- (iii) The petitioner shall not indulge in any offence of similar kind with which he has been charged in this case.

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

JUDGE

Comparing Assistant