

GAHC010222072022



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

Case No. : Bail Appln./2892/2022

NASHIR UDDIN MONDAL @ NASIR UDDIN MONDAL
S/O LT. HAJI ALIMUDDIN SHEIKH
R/O DIGHALTARI
P.S. GOLAKGNAJ
DIST. DHUBRI, ASSAM
PIN-783335

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. R ISLAM

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

ORDER

Date : 16.02.2023

Heard Mr. R. Islam, learned counsel for the petitioner. Also heard Mr. Bhaskar Sarma, learned APP appearing for the State.

2. The petitioner, who was arrested on 03.09.2022, is seeking regular

bail under section 439 Cr.P.C. in connection with Golakganj P.S. Case No. 324/2022, under sections 22(c) of the NDPS Act, corresponding to Special Case No. 388/2022, pending before the Court of learned Special Judge (Additional), Dhubri.

3. The learned counsel for the petitioner has submitted that till date the trial has not begun and accordingly, he prays for bail. It is further submitted that the petitioner has been arrested merely on the basis of the statement of a co-accused. Hence, it is submitted that as there are no other material except for the statement of a co-accused, there is hardly any chance of the petitioner being convicted of the offence.

4. Scanned copy of the LCR is received from the learned Court below. The learned APP has perused the same and opposed the prayer for bail.

5. On perusal of the scanned copy of the LCR, it appears that by order dated 29.11.2022, the case was fixed on 13.12.2022 for production of accused and evidence. The record further reveals that the contraband drugs have Methamphetamine as per the FSL Report dated 21.10.2022 and a total of 2600 tablets was seized from the conscious possession of a co-accused. It also appears that 10 nos. of plastic container containing suspected heroin weighing 41.144 grams (with container) was also seized from the co-accused. On perusal of the charge-sheet submitted by the I/O in connection with the aforesaid P.S. case, there appears to be no statement as to how the petitioner is found involved in the offence of dealing/paddling of narcotic drugs. The learned APP has not been able to show any materials in the case diary, except the statement of a co-accused from whom recovery of narcotic drugs was made. There is no supportive material to *prima facie* sustain the allegation that the petitioner was involved in this case.

6. Under such circumstances, as required under section 37 of the NDPS Act, the Court is inclined to *prima facie* hold that the petitioner is not guilty of committing any offence in the present case in hand.

7. Moreover, in this case, there is no material on record to show that the petitioner is a habitual offender or that he was ever arrested or convicted in any other similar offence. Therefore, as the petitioner is in custody for last 166 days, there is every likelihood that he would not commit similar offence in future if released on bail.

8. Accordingly, the Court is of the considered opinion that further custodial interrogation of the petitioner may not be necessary.

9. Hence, the Court is inclined to grant bail to the petitioner, namely, Nashir Uddin Mondal @ Nasir Uddin Mondal in connection with the aforesaid case on furnishing bail bond of Rs.2,00,000/- (Rupees two lakh only) with two solvent sureties of like amount to the satisfaction of the learned Special Judge (Additional), Dhubri. Out of the two sureties, one should offer his/her immovable property as security for grant of bail, having sufficient value to cover the bail amount.

10. Bail is granted on the following conditions:

I. The petitioner shall make himself available to the police or any other investigating agency or Court in the present case as and when required.

II. The petitioner shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to Court or to any police officer or tamper with the evidence. He shall not, in any manner, try to overawe or influence or intimidate the prosecution

witness.

III. The petitioner shall not obstruct the smooth progress of the investigation/trial.

IV. The petitioner shall not misuse his liberty in any manner.

V. The petitioner shall appear before the Court of learned Special Judge (Additional), Dhubri on each and every date. If the petitioner is unable to appear before the said learned Court on any particular date, he would obtain a previous order from the learned Special Judge (Additional), Dhubri to be absent on the date fixed. However, the petitioner shall ensure that he is duly represented by his learned counsel on such date.

VI. The petitioner would submit an undertaking before the trial Court that he would not dispute his identity or the identity of the witnesses when the trial proceeds while he is represented by his learned counsel.

VII. In the event, the petitioner fail to appear before the trial Court in disregard to these conditions, it would be open for the learned Special Judge (Additional), Dhubri to pass appropriate orders for cancellation of bail.

11. This application stands disposed of.

12. Before parting with the records, the Court is inclined to observe that the satisfaction recorded in terms of section 37 of the NDPS Act is only for the purpose of considering the prayer for bail and such observation shall not construed as a final opinion of the Court on the merit of trial. Hence, the trial Court shall proceed with the trial without being influenced by any observation made in this order.

13. Registry shall not issue copy (certified/un-certified) of any part of the scanned case diary.

JUDGE

Comparing Assistant