

GAHC010234862023



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

Case No. : Bail Appln./3770/2023

PREMJIT PAUL
S/O LATE- PORIMAL PAUL. R/O- VILL AND PO- SRIGOURI POLICE
STATION- BADARPUR. DISTRICT- KARIMGANJ. ASSAM.

VERSUS

THE STATE OF ASSAM
(TO BE REPRESENTED BY THE PUBLIC PROSECUTOR)

Advocate for the Petitioner : MR. M A CHOUDHURY

Advocate for the Respondent :

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

21.12.2023

Heard Mr. A. Ahmed, learned counsel for the petitioner. Also heard Mr. K.K. Parasar, learned Additional Public Prosecutor, Assam.

This application under section 439 of the Code of Criminal Procedure, 1973 has been filed by the petitioner, namely, Premjit Paul, who was arrested on

05.08.2023 (for last 138 days) in connection with Badarpur P.S. Case No. 199/2023 under Section 22(c)/25/29 of the NDPS Act, 1985.

The gist of accusation in this case is that on 05.08.2023, one Shafiquil Islam Mazumdar, S.I. of Badarpur Police Station had lodged an FIR before the Officer-In-Charge of Badarpur Police Station, *inter-alia*, alleging that after receiving an information through reliable sources that the petitioner is selling illegal psychotropic substance in his pharmacy, a team of police along with the first informant went to Kalachand Medical Hall at Srigouri Bazar and seized

- i. 18 nos of sealed brown colored plastic bottle containing liquid syrup named Codeine Phosphate, Chlorpheniramine Maleate and Sodium Citrate Cough Linctus" Histacod- C Marketed by Sanity Life Sciences bearing Mfg LIC No- G/25/100, having Quantity 100ml and B.No- AL-5604, Mfg- Jun 2023, Exp- Nov 2024, MRP- Rs. 160/-.
- ii. 27 nos of sealed brown colored plastic bottle with 10ml Plastic Cup containing liquid syrup named " Codeine Phosphate, Chlorpheniramine Maleate and Sodium Citrate Cough Linetus" Codius Cough Syrup Marketed by Lusture Pharmaceuticals Pvt. Ltd. bearing Mfg LIC No- G/25/100, having Quantity 100ml and B.No- AL-5625, Mfg Jul 2023, Exp- Dec 2024, MRP- Rs. 175/-.
- iii. 10 Nos tablet stripes, color- Silver, each containing 15 nos of tablet, Brand name- CLONOTROL 0.5, Composition- Clonazepam Dispersible Tablets, bearing B.No- 2JC6K004, Mfg- Jan 2023, Exp- Dec 2024, MRP per Blister Pack of 15 tablets = Rs. 51.74/-.

iv. 04 Nos tablet stripes, color- Silver, each containing 15 nos of tablet, Brand name- CLONOTROL 0.5, Composition- Clonazepam Dispersible Tablets, bearing B.No- 2JC6J020, Mfg- Sep 2022, Exp- Aug 2024, MRP per Blister Pack of 15 tablets = Rs. 51.74/-.

v. 02 Nos tablet stripes, color- Silver, each containing 15 nos of tablet, Brand name- CLONOTROL 0.25, Composition- Clonazepam Dispersible Tablets, bearing B. No- 2HW6J007, Mfg- Sep 2022, Exp- Aug 2024, MRP per Blister Pack of 15 tablets = Rs. 31.18/-.

vi. 9 Nos tablet stripes, color- Blue, each containing 10 nos of tablet. Brand name- Zolam 0.25, Composition- Alprazolam Tablets I.P. 0.25mg, bearing B.No- C23A485, Mfg 04/2022, Exp-03/2025, MRP-Rs. 19.16/-, per 10 tablets.

vii. 03 Nos tablet stripes, color- Blue, each containing 10 nos of tablet, Brand name Zolam 0.5, Composition- Alprazolam Tablets I.P. 0.5mg, bearing B.No- C23F297, Mfg- 09/2022, Exp- 08/2025, MRP Rs. 40.13/-, per 10 tablets.

viii. 06 nos of empty brown colored plastic bottle Brand name- Histacod-C, Composition- "Codeine Phosphate, Chlorpheniramine Maleate and Sodium Citrate Coug Linctus" Marketed by Sanity Life Sciences bearing Mfg LIC No- G/25/100, having Quantity 100ml and B.No- AL-5604, Mfg- Jun 2023, Exp- Nov 2024, MRP- Rs. 160/-.

The petitioner was arrested from the said place and since then he has been detained behind the bars.

Learned counsel for the petitioner has submitted that the pharmacy from where the above mentioned contraband was seized belongs to the brother of the present petitioner, namely, Prasanjit Paul.

It is also submitted by the learned counsel for the petitioner that the brother of the petitioner has the valid license for his pharmacy, namely, M/s Kalachand Medical Hall and as per the terms and conditions of the license the pharmacy of the brother of the petitioner is licensed to sell, stock and exhibit drugs excluding those specified and scheduled 'X' drugs.

Learned counsel for the petitioner also submits that the drugs seized by the Investigating Officer in this case are not scheduled 'X' drugs and therefore, the conditions of the license granted to the pharmacy of the brother of the petitioner is not violated in any manner.

It is further submitted by the learned counsel for the petitioner that the brother of the petitioners, namely, Prasanjit Paul is a registered medical practitioner of alternative medicine and to substantiate his submissions, learned counsel for the petitioner has referred to the annexure-5 to the bail application, wherein, he has annexed the registration certificate of the brother of the petitioner regarding the certificate held by him as registered medical practitioner of alternative medicine.

Learned counsel for the petitioner has also submitted that at the time when the seizure was made the brother of the petitioner was not in his pharmacy and in his place the present petitioner was sitting there temporarily and all the seized articles were recovered from the pharmacy of the brother of the petitioner and not from his possession.

Learned counsel for the petitioner has also submitted that though the prosecution has relied on the statement made by the petitioner himself

confessing his guilt before the Investigating Officer, however, as per the observation made by the Apex Court in the case of ***Toofan Singh Vs. State of Tamil Nadu, reported in (2021) 4 SCC 1*** the statement made by the accused under Section 67 of the NDPS Act, 1985 is not an admissible evidence and the same may not be used in any manner against the petitioner.

On the other hand, learned Additional Public Prosecutor has submitted that the contrabands seized in this case are of commercial quantity and therefore, the embargo of Section 37 of the NDPS Act, 1985 would be applicable here in this case and therefore, he opposes the grant of bail to the present petitioner.

I have considered the submissions made by the learned counsel for both the sides and also gone through the case diary of Badarpur P.S. Case No. 199/2023.

On perusal of the case diary, it appears that the seizure witnesses have stated in their statement recorded under Section 161 of the Code of Criminal Procedure, 1973 to the Investigating Officer that the recovery of the seized contraband was made from the pharmacy of the petitioner. However, it appears from the license of the pharmacy, namely, M/s Kalachand Medical Hall the Zimma of which was given to the registered owner, by order dated 29.09.2023, passed by learned Special Judge, Karimganj, that the registered owner of the said pharmacy is one Prasanjit Paul, who is the brother of the present petitioner.

On perusal of the case diary, it appears that apart from the statement of the accused which was recorded under Section 161 of the Code of Criminal Procedure, 1973, there is no convincing material to show that the contrabands were seized from the possession of the present petitioner and that the present petitioner is the owner of the Kalachand Medical Hall and even at this stage for

the consideration of the bail application, the statement recorded under Section 161 of the Code of Criminal Procedure, 1973 would remain inadmissible to come to a finding as to whether there are reasonable materials on record to come to believe that the petitioner is involved in the offence alleged against him. Rather on the basis of the material available in the case diary as well as on the basis of the submissions made by learned counsel for the petitioner, it appears that at this stage for the purpose of consideration of the bail application of the present petitioner, it can be held that there are reasonable materials on record to come to a finding that the petitioner is not guilty of the offence alleged against him in the FIR. There is also no material on record to show that in the event of granting of bail the petitioner would commit an offence while remaining on bail.

Therefore, in view of the above, the petitioner namely, Premjit Paul is hereby allowed to go on bail of Rs. 50,000/- with a suitable surety of like amount to the satisfaction of learned Special Judge, Karimganj with following conditions:-

- (i) that the petitioner shall appear before the Investigating Officer of Badarpur P.S. Case No. 199/2023 as and when so required by the Investigating Officer and shall co-operate in the investigation;
- (ii) that 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 deposing against the petitioner in the pending trial against him; and
- (iii) that the petitioner shall not leave the jurisdiction of the Trial Court without prior leave of the learned Special Judge, Karimganj during the pendency of investigation of Badarpur P.S. Case No. 199/2023.

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

Send back the case diary.

JUDGE

Comparing Assistant