

GAHC010240362023



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

Case No. : Bail Appln./3822/2023

BADRUL ISLAM
S/O MOIN UDDIN VIILL. DEWBARI PART VI P.O. KANAIBAZAR P.S.
PATHARKANDI PIN 788724 DIST. KARIMGANJ ASSAM

VERSUS

THE STATE OF ASSAM
REP BY THE PP, ASSAM

Advocate for the Petitioner : MR. N H LASKAR

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN

O R D E R

08.12.2023

Heard Mr. N.H. Laskar, learned counsel for the accused and Mr. P. Borthakur, learned Additional Public Prosecutor for the State respondent.

2. This application under Section 439 of the Code of Criminal Procedure, 1973, is preferred by accused, namely, **Badrul Islam**, who has been languishing in

jail hazot in connection with **Bazaricherra P.S. Case No. 63/2023**, under Sections 21[c]/25/29 of the NDPS Act, for granting bail.

3. The said case has been registered on the basis of an FIR lodged by S.I. Jyoti Prasas Das, on 09.03.2023.

4. The essence of allegations made in the FIR is that on that day at about 11:40 pm, during naka checking, they have intercepted one Maruti ALTO 800, bearing registration No. AS-10-F-5299 and apprehended three persons namely, Kabir Ahmed; Aatab Uddin; and Abdul Kadir and recovered **1,274.16 grams** of suspected **Heroin**.

5. Mr. Laskar, learned counsel for the accused submits that the accused was arrested on 12.03.2023, and since then he has been languishing in jail hazot. Mr. Laskar further submits that on completion of investigation, the IO had laid charge sheet against the accused and on 10.11.2023, the learned court below had framed charge against the accused, under Section 21[c]/29 of the NDPS Act and no witnesses have yet been examined till date. Mr. Laskar further submits that nothing has been recovered from the possession of the accused and that he is not the driver of the vehicle and that he will appear before the learned court below on each and every date and therefore, it is contended to allow this petition.

6. On the other hand, Mr. Borthakur, learned Additional Public Prosecutor, by producing the case diary before the court has vehemently opposes the petition on the ground that the recovered substance is of commercial quantity and the accused has failed to satisfy the twin requirement of Section 37 of the NDPS Act and that the offences are serious in nature and therefore, it is contended to dismiss the petition.

7. Having heard the submission of learned counsel for both the parties, I have carefully gone through the petition and the documents placed on record and also perused the case diary with the assistance of learned Additional Public Prosecutor.

8. That, perusal of the case diary reveals that the recovered contraband substance is of commercial quantity and from the materials placed on record and also from the submission of Mr. Laskar, learned counsel for the accused, this Court is unable to derive its satisfaction that the accused is not guilty of the offence and that he will not commit similar offence while on bail.

9. It is to be mentioned here that in the case of **Union Of India vs. Ajay Kumar Singh @ Pappu**, Criminal Appeal No. 952 OF 2023 [Arising out of SLP (CRL.) No.2351 OF 2023], decided on 28 March, 2023, Hon'ble Supreme Court, while setting aside the order of granting bail, by the Allahabad High Court, to the accused involving in commercial quantity of contraband substance, has held as under:-

“In view of the above provisions, it is implicit that no person accused of an offence involving trade in commercial quantity of narcotics is liable to be released on bail unless the court is satisfied that there are reasonable grounds for believing that he is not guilty of such an offence and that he is not likely to commit any offence while on bail.”

10. Same principle has also been echoed in the case of **NCB vs. Mohit Agarwal** reported in **(2022) 0 Supreme (SC) 619**. In the said case it has also been made clear that where the commercial quantity of the contraband substance is involved, the period of detention of the accused is immaterial.

11. It is, however, a fact that nothing has been recovered from the possession

of the present accused. But, there is statement of co-accused that the present accused is the main supplier of contraband substances. But, now it is well settled that statement of co-accused which is not at all admissible. However, the Geo Mapping of the mobile phones of the accused persons reveals their location at Vapor village of Champhai District of Mizoram from 08.02.2023 to 09.03.2023, and the CDR analysis reveals frequent contact between the present accused with other co-accused on 08.03.2022 and 09.03.2023, which shows involvement of the present accused with the other co-accused in the conspiracy of transporting contraband substance from Mizoram to Ashimganj of Karimganj. And because of this the matter stands in a different footing

12. Under the aforesaid facts and circumstances this Court is of the view that this is not a fit case where the privilege of bail can be extended to the accused.

13. Accordingly the petition stands dismissed.

14. However, the learned court below is directed to make an endeavor to complete the trial within earliest possible time.

JUDGE

Comparing Assistant