

GAHC010245952023



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

Case No. : Bail Appln./3943/2023

ABDUL MANNAN ALI
S/O ABDUL MATLEB ALI
R/O VILL- DOLOITOLA
P.S. HAJO
DIST. KAMRUP, ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MS. R KALITA

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

Date : 06.11.2023

Heard Ms. R. Kalita, learned counsel for the petitioner. Also heard Mr. D. Das, learned Additional Public Prosecutor for the State.

This application under Section 439 of the Code of Criminal Procedure, 1973 has been filed by the petitioner who has been detained behind the bar since 30.01.2023 in connection with Jalukbari P.S. Case No. 56/2023 under

Section 21(c) of the NDPS Act, 1985.

This is for the third time the petitioner has approached this Court seeking bail. His earlier prayer for bail were rejected on 04.08.2023 and thereafter his second bail petition was rejected on 04.10.2023 on the ground that one of the contraband seized in this case i.e., the cough syrup containing codeine phosphate was found to be of commercial quantity and, hence, it was held earlier that the embargo of Section 37 of the NDPS Act, 1985 comes into play and there is no materials on record to show that there are reasonable ground for believing that the present petitioner is not guilty of the offence charged against him.

The learned counsel for the petitioner in the instant bail petition has again reiterated the same facts which she has earlier submitted while moving the bail applications on earlier occasions. The plea raised by the present petitioner in the instant bail application that the content of the codeine phosphate found in the seized contraband is not of prohibited quantity has already been decided by this Court in earlier two bail applications filed by the present petitioners which were rejected earlier.

The learned counsel for the petitioner has submitted that the Entry 35 of Notification relating to Manufactured Narcotics Drugs issued by Government of India on 14.11.1985 and 21.09.1993 which provides that what is prohibited under the said notification is any preparation of Methyl morphine (commonly known as Codeine) with one or more other ingredients and containing not more than 100mg of the drug per dosage and with a concentration of not more than 2.5% in undivided preparations. However, in the instant case as per submission of learned counsel for the petitioner, the content of codeine phosphate in the per unit does of drug is not more than 2.5% but rather it is 0141.7%. However,

this submission of learned counsel for the petitioner was earlier dealt with while considering the second bail petition by the present petitioner and by order dated 04.10.2023 the said contention was rejected and it was held by this Court that the content of codeine phosphate in the seized contraband is of prohibited quantity and the contraband seized in this case is of commercial quantity and, therefore, the embargo of Section 37 of NDPS Act, 1985 comes into play in this instant case, the situation has not yet changed. Therefore, this Court is constrained by the embargo of Section 37 of the NDPS Act, 1985 and accordingly dismiss the bail prayer of the petitioner at this stage.

JUDGE

Comparing Assistant