

GAHC010291612023



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

Case No. : Bail Appln./4645/2023

MD. SAIJUDDIN ALI @ SHOYJUDDIN AHMED
S/O. LT. BILLAL HUSSAIN,
R/O. JAMLAI, P/S NAGARBERA, DIST- KAMRUP

VERSUS

THE STATE OF ASSAM
REPRESENTED BY PP, ASSAM

Advocate for the Petitioner : MR. B CHOWDHURY

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

22.12.2023

Heard Mr. B. Chowdhury, learned counsel for the petitioner. Also heard Mr. P. Borthakur, learned Additional Public Prosecutor, Assam.

This application under section 439 of the Code of Criminal Procedure, 1973 has been filed by the petitioner, namely, Md. Saijuddin Ali @ Shoyjuddin

Ahmed, who has been detained behind the bars since 03.12.2023 (for last 20 days) in connection with Chhaygaon P.S. Case No. 553/2023 under Section 21(b)/29 of the NDPS Act, 1985.

The gist of accusation in this case is that on 03.12.2023, one Alex Sonowal, S.I. of Police of Chhaygaon Police Station had lodged an FIR before the Officer-In-Charge of Chhaygaon Police Station, *inter-alia*, alleging that on receipt of an information through reliable sources, a Naka Checking duty was conducted and during the Naka Checking duty one vehicle bearing Registration No. AS11D9504 was intercepted and during search of the said vehicle three occupants were found in the said vehicle, namely, Sahil Hussain, Johny Choudhury and one Shah Niwas and during their search, 10 numbers of plastic vials containing yellow coloured powdery substance suspected to be Heroin was found from their possession. The total quantity of the Heroin was 8.22 gram.

It is further alleged in the FIR that during interrogation, one of the apprehended accused persons namely, Shah Niwas reveled that he had come to sell the narcotics drugs to the present petitioner, who is also known as a drug peddler.

Learned counsel for the petitioner has submitted that nothing was seized from the possession of the present petitioner and merely on the basis of the statement of the co-accused the present petitioner has been arrested and he has been detained behind the bars for last 20 days.

Learned counsel for the petitioner has relied upon the ruling of the Apex Court in the case of "**Toofan Singh Vs. State of Tamil Nadu, reported in 2021 4 SCC 1**" wherein, it was observed by the Apex Court that the statement made by the accused under Section 67 of the NDPS Act, 1985 is not admissible in law.

In the instant case also, learned counsel for the petitioner submits that it is apparent from the forwarding report dated 03.12.2023 filed by the Investigating Officer of this case before the Chief Judicial Magistrate, Kamrup (Amingaon) that the sole basis for arresting and implicating the present petitioner in this case is the statement of the co-accused and nothing has been recovered from his possession.

On the other hand, learned Additional Public Prosecutor submits that perusal of the case diary would be necessary for consideration of the instant bail application.

I have considered the submissions made by the learned counsel for both the sides and have perused the materials available on record including the annexures annexed with the bail application. The quantity of contraband seized in connection with this case is of 8.22 gram of Heroin and the petitioner has already been detained behind the bars for last 20 days.

Further, it also appears from the materials available on record that the seized contraband was not recovered from the possession of the present petitioner.

Considering the above facts as well as the quantity of contraband seized, this Court is of the considered opinion that further custodial detention of the petitioner may not be necessary if he otherwise co-operates in the investigation for fair completion of the investigation of Chhaygaon P.S. Case No. 553/2023.

In view of the above, the above named petitioner is hereby allowed to go on bail of Rs. 30,000/- with a suitable surety of like amount to the satisfaction of the learned Special Judge, Kamrup (Amingaon) subject to the conditions that:-

- (i) the petitioner shall not directly or indirectly make any inducement,

threat or promise to the informant or to any other persons who may be acquainted with the facts of the case so as to dissuade such person from disclosing such facts before the Investigating Officer or to any Court; and

(ii) the petitioner shall co-operate in the investigation.

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

Send back the case diary.

JUDGE

Comparing Assistant