

GAHC010001292024



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

Case No. : Bail Appln./12/2024

SAHIR NAWAZ
S/O NURUL ISLAM, P/R/O SIBSAGAR, JENGONIKOTIA CHARIALI, P.S.-
SIBASAGAR, DIST-SIBASAGAR, PIN-785640, ASSAM, PRESENT ADD.-
HOUSE NO. 92, LNB PATH, HATIGAON, P.S.-HATIGAON, DIST-KAMRUP (M),
ASSAM

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

Advocate for the Petitioner : MR. A M BORA

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI

ORDER

Date : 21.03.2024

Heard Ms. N.S. Thakuria, learned counsel for the petitioner. Also heard Mr. B.B. Gogoi, learned Additional Public Prosecutor appearing for the State.

2. This is an application filed under **Section 439 Cr.P.C.**, seeking bail by the

petitioner, namely, **Sahir Nawaz**, in connection with **Dispur P.S. Case No. 2277/2023**, registered under Section **21(b)/22(C)/29 of NDPS Act, 1985**.

3. The learned counsel for the petitioner submits that the petitioner has been languishing in jail hazot since 11.12.2023 without committing any such offence. The alleged contraband was recovered from the possession of co-accused persons in connection with this case. Nothing was recovered from the possession of the present petitioner. It is further submitted that on the basis of the statement made by the co-accused persons, the petitioner was arrested. It is a settled position of law that one cannot be convicted on the basis of confession/statement of co-accused. Therefore, the learned counsel for the petitioner has prayed that considering the period of detention as well as the background of the case, the petitioner may be enlarged on bail.

In support of her submission, the learned counsel for the petitioner has placed reliance on the following case laws-

- (i) The State of Haryana v. Samarth Kumar, reported in 2022 LiveLaw (SC) 622;
- (ii) Tofan Singh v. State of Tamil Nadiu, reported in (2021) 4 SCC 1.

4. On the other hand, Mr. Gogoi, learned Additional Public Prosecutor for the State has produced the case diary along with the statement of the co-accused persons. It is also submitted that the co-accused persons did not disclose the name of the present petitioner that they have collected the said contraband from the petitioner. He further submits that the investigation is still going on, so that at this stage, bail may not be considered to the petitioner.

5. I have considered the submissions made by the learned counsel for the parties. I have also perused the case diary along with the relevant documents

available thereon.

6. It appears from the record that the suspected contraband was not recovered from the possession of the present petitioner. Apparently, there is no allegation in the case diary till such investigation regarding involvement of the present petitioner in connection with this case.

7. In view of the above and considering the length of detention of the petitioner, this Court is of the view that further custodial interrogation of the accused-petitioner is not necessary for the purpose of investigation of the case.

8. Accordingly, the accused-petitioners, named above, shall be released on bail in connection with **Dispur P.S. Case No. 2277/2023**, registered under Section **21(b)/22(C)/29 of NDPS Act, 1985**, on furnishing bail bond of **Rs.1,00,000/- with two suitable sureties** of the like amount to the satisfaction of learned Special Judge(NDPS), Kamrup(M), Guwahati, Assam.

9. The direction for bail is further subject to the conditions that the accused-petitioner:

(a) shall not leave the territorial jurisdiction of learned Special Judge(NDPS), Kamrup(M), Guwahati, Assam, without prior written permission from him/her;

(b) 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 them from disclosing such facts to the Court or to any police officer.

10. In terms of the above, this bail application stands disposed of.
11. Send back the case diary.

JUDGE

Comparing Assistant