

GAHC010002402024



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

Case No. : Bail Appln./66/2024

AZAHARUL ISLAM
S/O- LT. AFTOR ALI, R/O- VILLAGE- HAHSARA, P.O. DOLAIGAON, P.S.
BHELOWGURI, DIST.- MORIGAON, ASSAM

VERSUS

THE STATE OF ASSAM
REPRESENTED BY P.P., ASSAM

Advocate for the Petitioner : MR. M A SHEIKH

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN
ORDER

05.02.2024

Heard Mr. M. A. Sheikh, learned counsel for the accused. Also heard Mr. B. Sarma, learned Addl. P.P. for the State respondent.

2. This application, under Section 439 Cr.P.C. is preferred by accused, **Azaharul Islam**, who has been languishing in jail hajoat in connection with **Special NDPS Case No. 250/2023**, arising out of Nagaon P.S. Case No. 728/2023, under Sections 20(b)(ii)(c) of the Narcotic Drugs and Psychotropic Substance Act, pending before the Learned Additional Sessions Judge, No.2,

Nagaon, for grant of bail.

3. The above noted case has been registered on the basis of an FIR lodged by one Bibhuti Thapa, In-Charge- Morikolong TOP, on 04.08.2023.

4. The essence of allegation, made in the FIR, dated 04.08.2023, is that acting on a tip off the informant and his police staff conducted search at Nagaon Railway Station and apprehended one Ejajul Islam and recovered two packets, containing Ganja (cannabis), weighing 25.060 kgs, and seized the same in presence of witnesses.

5. Mr. Sheikh, learned counsel for the accused, submits that the accused was arrested on 22.08.2023, and since then, he has been languishing in jail hajot for more than 136 days. Mr. Sheikh further submits that the investigation herein this case has culminated in submission of charge sheet before the learned Court below and now the case is pending for consideration of charge. Mr. Sheikh further submits that nothing has been recovered from the possession of the accused and that he was arrested only on the basis of his own statement, which is not at all admissible as evidence and that the accused is innocent and he will face the trial and he will appear before the learned Court below on each and every date and, therefore, Mr. Sheikh contended to allow this petition.

6. On the other hand, Ms. A. Begum, learned Addl. P. P. submits that charge against the accused is yet to be framed and that the quantity of contraband substance recovered from the possession of the co-accused is of commercial quantity and as such, the accused has to satisfy the requirement of Section 37 of NDPS Act but, the accused has failed to satisfy those requirements, and that he was absconding after the occurrence and therefore, Ms. Begum, the learned Addl. P.P., has opposed the petition.

- 7.** Having heard the submission of learned Advocates for both the parties, I have carefully gone through the petition and the documents placed on record and also perused the scanned copy of the record and case diary received from the learned Court below.
- 8.** It is not in dispute that the quantities of the contraband substances, so recovered from the possession of the co-accused is of commercial quantity, and as such the accused person has to satisfy the twin conditions of Section 37 of the NDPS Act that - there is no reasonable ground to believe that the accused is not guilty of the offence and that he is not likely to commit any offence while on bail.
- 9.** It is however a fact that the seized contraband substances were not recovered from the possession of the present accused. But, the same does not absolve it of level of scrutiny required under section 37(1) (b) (ii) of NDPS Act, as held by Hon'ble Supreme Court in **Union of India through NCB, Lucknow vs. Nawaz Khan** reported in **(2021) 10 SCC 100** as the quantity of contraband substance recovered from the possession of co-accused is of commercial quantity, and as such, the embargo under Section 37 of the NDPS Act will definitely come into play.
- 10.** But, from the materials on record, specially from the scanned copy of the record and also from case diary received from the learned court below and also from the submission of learned counsel for the accused, this Court is unable to derive its satisfaction that there exists any reasonable ground for believing that the accused is not guilty of the offence and that he is not likely to commit any offence, while on bail. Besides, he was very much with the co-accused Ejajhul Islam, who happened to be his cousin, and was proceeding to Chennai with the contraband substances, and was absconding after

apprehension of co-accused Ejajul Islam at the Railway Station by police.

11. In view of above, and also in view of the nature and gravity of the offence and the punishment prescribed for the same this Court is of the opinion that this is not a fit case to grant the privilege of bail under Section 439 of the Cr.P.C. to the accused and therefore, the same stands dismissed.

12. However, the learned Court below is directed to expedite the trial and conclude the same at the earliest possible time, without being influenced by any of the observations made by this court herein above. And if necessary, the learned court below shall take recourse to the provision of Section 309(1) of the Cr.P.C.

13. In terms of above, the bail application stands disposed of.

Comparing Assistant

JUDGE