

GAHC010014982024



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

Case No. : Bail Appln./246/2024

LAL BADSHA
S/O LATE SABED ALI
R/O VILL- GORAIMARI PT. II
P.S. AND DIST. BONGAIGAON, ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. M KHAN

Advocate for the Respondent : PP, ASSAM

BEFORE
HON'BLE MR. JUSTICE ROBIN PHUKAN
ORDER

22.02.2024.

Heard Mr. M. Khan, learned counsel for the accused. Also heard Mr. R.J. Baruah, learned Addl. P. P. for the State respondent.

2. This application, under Section 439 of the Code of Criminal Procedure, 1973, is preferred by

accused **Lal Badsha**, who has been languishing in jail hazoot since 07.01.2024, in connection with the **Bongaigaon P.S. Case No. 10/2024**, registered under Sections 21(b)/29 of the NDPS Act, for grant of bail.

3. It is to be noted here that the aforementioned case has been registered on the basis of an FIR lodged by SI Sukesh Ghosh, I/C North Bongaigaon, on 07.01.2024.

4. The essence of allegations, made in the said FIR is that acting on a tip off on 07.01.2024, at about 07.10 pm the informant along with staff apprehended Lal Badsha of Delhi Punjabi Dhaba while he was coming from Bijni side and entered in to his Dhaba and conducted search of his person and recovered 25.52 grams of suspected Heroin from his person and seized the same by preparing seizure list in presence of witnesses.

5. Mr. Khan, learned counsel for the accused, submits that the accused was arrested on 07.01.2024, and since then he has been languishing in jail hazoot for last 41 days. Mr. Khan further submits that the contraband substance recovered from the possession of accused is intermediate quantity and as such the embargo under section 37 of the NDPS Act is not applicable and that the accused is ready to co-operate with the investigating agency and therefore, it is contended to allow the petition.

6. On the other hand, Mr. R.J. Baruah, the learned Addl. P.P. submits that though the quantity of contraband substance so recovered from the possession of the accused is of intermediate quantity, yet the accused is a habitual offender and if enlarged on bail he will indulge in similar activities again and that investigation is going on and therefore, it is contended to dismiss the petition.

7. In reply to the submission of learned Addl. P.P., Mr. Khan has produced a copy of judgment, dated 08.09.2023, of Special Judge, Chirang in Special NDPS Case No. 06 of 2021, to contend that the accused was acquitted in the said case.

8. Having heard the submissions of learned Advocates of both side, I have carefully gone through the petition and the documents placed on record. Also, I have gone through the judgment, dated 08.09.2023, of Special Judge, Chirang in Special NDPS Case No. 06 of 2021.

9. It appears that the accused was arrested on 07.01.2024, and since then he has been languishing in jail hazoot for last 41 days. Further, it appears that the contraband substance, so recovered from the possession of accused, is of intermediate quantity and as such the accused is not required to undertake

the arduous task of satisfying the twin requirement of section 37 of the NDPS Act.

10. It appears that he was an accused in Special NDPS Case No. 06 of 2021, arising out of Dhaligaon P.S. Case No. 150/21 u/s 17(C)/29 of the NDPS Act, wherein he was acquitted. But, the fact remains that he is a habituated to the offences under NDPS Act and as such it cannot be said that he will not indulge in such activities again. Moreover, the investigation is still going on. The conspiracy angle is yet to be unearthed.

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

JUDGE

Comparing Assistant