

GAHC010018572024



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

Case No. : Bail Appln./295/2024

MOKSEDUL HOQUE
S/O- LT. HAMIDUR RAHMAN, R/O- VILLAGE- CHAGOLIA PT-II, P.S.
GOLAKGANJ, DIST.- DHUBRI, ASSAM

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

Advocate for the Petitioner : MR. M I HUSSAIN

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI

ORDER

20.04.2024

Heard Mr. M. I. Hussain, learned counsel appearing for the accused petitioner as well as Mr. R. R. Kaushik, learned Addl. P.P., Assam appearing for the State respondent.

By this petition under Section 439 Cr.P.C., the accused-petitioner, namely, **Moksedul Hoque**, has prayed for grant of bail in connection with **Golakganj P.S.**

Case No.193/2023 which is registered as Special Case No. 179/2023 pending before the Ld. Special Judge, (Addl.) Dhubri **under Section 22(C) of NDPS Act.**

The case of the prosecution is that the FIR has been lodged on 12/04/2023 alleging inter alia that on 11/04/2023 at around 9:30 PM, on receipt of an information by the in charge of Chagolia outpost, from a reliable source that the petitioner has been doing business of selling narcotic drugs from his house, accordingly, police of Golakganj PS searched the house of the petitioner and recovered 18 nos of Eskuf Cough Syrup bottles from his house which were kept concealed near the stored bamboo firewood and the said contraband was seized. Thereafter, the petitioner was apprehended by the police.

Learned counsel for the petitioner has submitted that the petitioner is a businessman by profession having a grocery shop. The alleged contraband was recovered from outside of his house. The alleged recovery was not made from the conscious possession of the petitioner. He is totally unaware about the recovery of such contraband.

It is also the submission of the learned counsel for the petitioner that the accused has been languishing in jail hazot for more than 1 (one) year since his arrest on 11/04/2023. Out of 9 (nine) cited witnesses only 4 (four) witnesses were examined and amongst them the independent witnesses had not supported the case of the prosecution.

It is further submitted that due to failure on the part of the prosecution to examine witnesses, the personal liberty of the petitioner has been curtailed. Speedy trial is a fundamental right under Article 21 of the Constitution of India. Considering the length of detention the petitioner may be enlarged on bail.

In support of his submission, the learned counsel has placed reliance

on the following case laws –

- a. (2011) 11 SCC 347 (Ram Singh vs. CBI)
- b. (2020) 1 Law Herald 567 (Dalwinder Singh @ Dalora vs. State of Haryana)
- c. (2023) 1 CriCC 303 (Deep Raj @Neetu vs. State of Himachal Pradesh)
- d. Special leave to appeal (Criminal) 8823/2019 (Chitta Biswas @ Subhas vs. State of West Bengal)
- e. Special leave to appeal (Criminal) 4789/2022 (Gopal Krishna Patra @Gopal Rusma vs. Union of India)
- f. Bail application no. 3887/2023 (Anil Malakar vs. State of Assam)

In response, learned Additional PP has submitted that the accused was arrested on 12/04/2023. Commercial quantity of narcotic substance was recovered from the house of the present petitioner. Charge sheet was submitted on 11/07/2023. Charge was framed on 02/08/2023. Out of 9 witnesses already 4 witnesses have been examined. Under such backdrop there was no such procedural delay in this case. As the trial is going on, the learned Additional PP has prayed for dismissal of the bail application.

Though the learned counsel for the petitioner has raised the plea that the independent witnesses have not supported the case of the prosecution but from the evidence of PW 3 and 4 it reveals that they were present in the house of the accused/petitioner when police recovered 18 bottles of cough syrup from his house.

This court is also conscious of the Judgment passed by the Hon'ble Supreme

court in the case of State of Madhya Pradesh vs Kajad, reported in (2001) 7 SCC 673, wherein Honb'le Apex court has observed as under –

“.....Negation of bail is the rule and its grant an exception under sub clause (ii) of clause (b) of section 37 (1). For granting the bail the court must, on the basis of the record produced before it, be satisfied that there are reasonable grounds for believing that the accused is not guilty of the offence with which he is charged and further that he is not likely to commit any offence while on bail. Liberal approach in the matter of bail under the NDPS Act is uncalled for”.

Similarly, Hon'ble Supreme Court in the case of Union of India vs. Md. Nawaz Khan reported in (2021) 10 SCC 100, considered the position of law with regard to section 37 of NDPS Act and held that the test which the High Court are required to apply while granting bail is that there are reasonable grounds to believe that the accused has not committed an offence and whether he is likely to commit any offence while on bail.

In the case in hand, commercial quantity of narcotic substance was recovered from the house of the accused/petitioner. There is no explanation from the side of the petitioner why he kept such contrabands inside his house. Situated thus, it cannot be said that there are reasonable grounds to believe that the accused/petitioner has not committed any offence and that he is not likely to commit any offence while on bail.

In view of the discussion made herein above, this court is not inclined to enlarge the accused/petitioner on bail. Consequently the bail application is rejected. However the learned trial court is directed to take initiative to dispose

of the matter early.

The bail application is disposed of accordingly.

JUDGE

Comparing Assistant