

GAHC010023942024



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

Case No. : Bail Appln./379/2024

MD. REZZAKUL ISLAM
S/O MD. ABDUL SAMAD
R/O VILL- NK DARRANGA, P.S. TAMULPUR
DIST. TAMULPUR, ASSAM

VERSUS

THE STATE OF ASSAM
REP BY THE PP ASSAM

Advocate for the Petitioner : MR. S A B KHABIR

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI

ORDER

Date : 13.03.2024

Heard Mr. A.S. Ali, learned counsel for the accused-petitioner as well as Mr. M.P. Goswami, learned Additional Public Prosecutor for the state respondent.

2. This is an application filed under **Section 439 Cr.P.C.**, seeking bail by the accused-petitioner, namely, **Md. Rezzakul Islam**, in connection with **Special NDPS Case No. 08/2023(arising out of Tamulpur P.S. Case No. 144/2023)**, registered under Section **22(b)/22(c)/25 of NDPS Act, 1985, pending in the court of Special Judge, Baksa, Mushalpur.**

3. The learned counsel for the petitioner submits that the petitioner is running a pharmacy under the name and style of M/s Raj Medical Store, Baksa(BTAD), Assam. The allegation as levelled against the petitioner is totally false and baseless. The petitioner is no way involved in the instant case i.e. trafficking of narcotic substance. It is also submitted that he has been detained in custody for the last ten months and out of 13 witnesses, only 2 witnesses have been examined. The petitioner has also minor children. Considering the fact as well as period of detention, the petitioner may be enlarged on bail.

4. On the other hand, learned Additional PP has vehemently opposed in granting bail to the accused/petitioner by stating that the petitioner was illegally possessing and selling psychotropic substances. From the seizure list, it reveals that commercial quantities of psychotropic substances were recovered from the pharmacy owned by him. In view of the above, bail may not be considered at this stage.

5. I have considered the submissions of learned counsel for the parties. I have also perused the trial court record.

6. Section 37 of NDPS Act, reads as follows –

“37. Offences to be cognizable and non-bailable.—

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974)—

(a) every offence punishable under this Act shall be cognizable;

(b) no person accused of an offence punishable for offences under section 19 or section 24 or section 27A and also for offences involving commercial quantity shall be released on bail or on his own bond unless—

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

(2) The limitations on granting of bail specified in clause (b) of subsection (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force, on granting of bail.

7. It is evident that no person can be enlarged on bail if he is found in possession of commercial quantity of Narcotic substances under NDPS Act, unless the court comes to the conclusion that accused is not guilty of offence and prosecution has been given opportunity to oppose the bail application.

8. It appears from the record that the accused/petitioner was apprehended on 14/05/2023. After completion of investigation, charge sheet was submitted on 02/11/2023. Charge was framed on 12/12/2023

u/s 22 © of NDPS Act. Thereafter, summons were issued to the witnesses and two (2) witnesses were examined. Now the law is clear that detail appreciation of evidence cannot be done at the time of considering the bail in heinous offence. It is not a case that there is nothing incriminating spoken by witnesses examined so far.

9. Though it was stated by the learned counsel that the accused/petitioner was running a medical store but it was found that the accused possessed three invalid drug license, two in the name of M/s Ashik Raj Drug Distributor valid till 23/07/2022 and one in the name of M/s Raj Medical Store valid till 31/12/2011. He was running medical store illegally. A large quantity of Narcotic Drugs and psychotropic substances were recovered from his pharmacy i.e., Raj Medical Store, knowing fully well that he has no valid license for running the pharmacy.

10. In view of the above, this court does not find any reason to believe that there are reasonable grounds for believing that the accused/petitioner is not guilty of such offence for which he has been charged.

11. In the result, bail application is rejected. However, learned Trial court is directed to expedite the trial of the case.

12. Bail application is disposed of accordingly. The order is confined only to consider the bail application and not on merit of the case.

JUDGE

Comparing Assistant