

GAHC010027092024



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

Case No. : Bail Appln./405/2024

SWAPAN KR. DEB @ SWAPAN KR. DAS
S/O LT. GIRENDRA KR. DAS
VILL- FULERTAL WARD NO. 4,
P.O. FULERTAL, P.S. LAKHIPUR
DIST. CACHAR, ASSAM
PIN-788106

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. I H LASKAR

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN
ORDER

31.05.2024

Heard Mr. P.K. Deka, learned counsel for the accused and Mr. P.S. Lahkar, learned Additional Public Prosecutor for the State respondent.

2. This application under Section 439 of the Code of Criminal Procedure, 1973, is preferred by accused namely, **Swapan Kr. Deb @ Swapan Kr. Das**, who has been languishing in jail hazot in connection with the **Lakhipur P.S. Case No. 202/2023**, under Sections 22(c)/25/29 of the NDPS Act, for granting bail.

3. It is to be noted here that the said case has been registered on the basis of an FIR lodged by S.I. Bibhash Lal Sinha, on 01.08.2023. The essence of allegations made in the FIR is that on 01.08.2023, at about 1:30 pm, he along with his staff apprehended one person namely, Jema Hmar and recovered 40 bottles of Histacod-C (Codien Phosphate); 2 numbers of packet of Pyeevon Spas (Tramadole Hydrochloride) containing 480 capsules; and 11 strips of AADPM 10 (Nitrizepam) containing 10 tablets in one strip, total 110 tablets, which are Schedule H Drugs. On interrogation, he disclosed that he purchased the same from a nearby pharmacy and on being shown by him, the informant and his staff arrived at Rully Pharmacy, situated at Fulertol Ferry Ghat, on the road side, owned by one Swapan Kr. Deb and thereafter, conducted search in his pharmacy and godown and recovered 104 numbers of Histacod-D (Codien Phosphate); 26 numbers of Berrycan-CD (Codien Phosphate); 17 numbers of Codico M (Codien Phosphate); 31 numbers of APcorex (Codien Phosphate); 243 numbers of AADCO-C (Codien Phosphate); 150 numbers of APcorex-T (Codien Phosphate); 3600 numbers of capsule in 25 boxes AADSPA PRP (Tramadole Hydrochloride); 1440 numbers of capsule of Proxyco (Tramadole Hydrochloride); and 6240 numbers of capsule of Pyeevon Spas Plus (Tramadole Hydrochloride) and thereafter, seized the same in presence of witnesses and when Swapan Kr. Deb was asked, he failed to show any document and record of the said medicine.

4. Mr. Deka, learned counsel for the accused submits that the accused was arrested on 01.08.2023, and since then he has been languishing in jail hazot for more than 300 days. Mr. Deka further submits that investigation has already been completed and charge sheet has already been submitted before the learned trial court and that the learned trial court had framed charge against the present accused, under Sections 22(c)/25/29 of the NDPS Act. Mr. Deka also submits that out of 9 cited witnesses in the charge sheet, the learned trial court had examined

only 3 witnesses and none of them have implicated the present accused with the offence alleged in the FIR and that there is no immediate prospect of conclusion of trial and that the accused is ready to cooperate with the investigating agency and therefore, it is contended to allow this petition.

5. Mr. Deka, learned counsel for the accused, to a pointed query of this Court, submits that he cannot satisfy this Court about the twin requirements of Section 37 of the NDPS Act that the accused is not guilty of the offence and he will not commit any offence while on bail.

6. On the other hand Mr. Lahkar, learned Additional Public Prosecutor submits that the quantity of contraband substances so recovered from the possession of the accused are of commercial quantity and as such, the accused has to satisfy the twin requirements of Section 37 of the NDPS Act and as the accused has failed to satisfy the aforesaid two requirements under Section 37 of the NDPS Act, he is not entitled to bail. Mr. Lahkar further submits that though the 3 witnesses examined by the learned trial court have not implicated the accused with the offence charged, 6 other witnesses are yet to be examined and their statements recorded under Section 161 of the Cr.P.C. shows the culpability of the accused with the offence charged and therefore, it is contended to dismiss the petition.

7. Having heard the submission of learned counsel for both the parties, I have carefully gone through the petition as well as the documents placed on record and also perused the scanned copy of the record received from the learned trial court.

8. The scanned copy of the record and also the status report received from the learned trial court reveals that the accused was charged under Sections 22(c)/25/29 of the NDPS Act and out of the 9 cited witnesses in the charge sheet,

3 have already been examined. Further, it appears that the contraband substances so recovered from the possession of the accused are of commercial quantity and as such, the accused has to satisfy the twin requirement of Section 37 of the NDPS Act.

9. But, from the submission of the learned counsel for the accused and also from the materials available in the record received from the learned trial court, this Court is unable to derive its satisfaction that the accused is not guilty of the offence charged and he will not commit any offence while on bail.

10. In the case of **Union of India vs. Ajay Kumar Singh @ Pappu**, reported in **(2023) SCC OnLine SC 346**, the Hon'ble Supreme Court has observed that when commercial quantity is involved, the accused has to satisfy the twin requirement of Section 37 of the NDPS Act.

11. At this stage, Mr. Deka, learned counsel for the accused submits that as the accused is languishing in jail for more than 300 days, the learned trial court may be directed to complete the trial within a stipulated time period. But, Mr. Lahkar, learned Additional Public Prosecutor referring to a decision of Hon'ble Supreme Court in the case of **High Court Bar Association Allahabad vs. State of U.P. and Ors.**, reported in **(2024) SCC OnLine SC 207**, submits that unless any special ground is being shown, no such direction can be issued to the learned trial court to conclude the trial within a stipulated time period.

12. I find sufficient substance in the submission of Mr. Lahkar, learned Additional Public Prosecutor, admittedly Mr. Deka, learned counsel for the accused could not show any special ground to show as to direct the learned trial court to conclude the trial within a stipulated time period.

13. Under the aforementioned facts and circumstances as well as considering the nature and gravity of the offence and the punishment prescribed

for the same, this Court is of the view that this is not a fit case where the privilege of bail can be granted to the accused.

14. Accordingly, the B.A. stands dismissed.

Comparing Assistant

JUDGE