

GAHC010035052024



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

**Case No. : Bail Appln./505/2024**

ABDUL JALIL  
S/O ABDUS SAMAD  
R/O KISMAT HASHDOHA (HASDAHA ) PART-IV, P.S. DHUBRI (SADAR),  
DIST. DHUBRI, ASSAM

VERSUS

THE STATE OF ASSAM  
TO BE REP. BY THE PP, ASSAM

**Advocate for the Petitioner : MR. A A R KARIM**

**Advocate for the Respondent : PP, ASSAM**

**BEFORE**  
**HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND**

**ORDER**

**Date : 30-05-2024**

Heard Mr. M. Nath, learned Senior Advocate for the petitioner Sri Abdul Jalil, who has filed this application under Section 439 of the Code of Criminal Procedure, 1973 (CrPC for short) with a prayer for bail as he is behind bars since 11.09.2023 in connection with Special Case No.365/2022 arising out of

Dhubri Police Station Case No.861/2020 under Section 22(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (the NDPS Act for short).

2. The FIR unfolds that the informant along with his team while checking an auto bearing registration No. 17B 8883 at Gadaldhora Bridge, found 114 bottles, each containing 100 ml of cough syrup from the possession of one Monjur Ali, who was arrested. Thereafter, these bottles were seized in connection with this case. The arrested accused informed that the present petitioner had sent those cough syrup bottles with him to be sold as there are other huge amounts of contraband in his house. The house of the present petitioner was searched but the petitioner managed to escape.

3. Heard Mr. B. B. Gogoi, learned Additional Public Prosecutor, Assam for the respondent State.

4. I have considered the submissions at the bar with circumspection.

5. It is submitted that charge sheet has been laid against the petitioner on 13.07.2022 under Section 22(b) of the NDPS Act but the learned Trial Court framed charge under Section 22(c) of the NDPS Act without applying judicial mind. As NBWA was issued against him, the petitioner had approached this Court and vide order dated 29.08.2025 in Criminal Petition No. 905/2023, the petitioner was directed to appear before the learned Trial Court. When, in compliance of the order of this Court, the petitioner appeared before the Trial Court, the petitioner was forwarded to custody on 11.09.2023 and since then he is behind bars.

6. Heard the learned Additional Public Prosecutor, Assam for the respondent State.

7. The learned Additional Public Prosecutor has raised serious objection stating that the learned Trial Court has correctly framed charge under Section 22(c) of the NDPS Act as the quantity recovered from the co-accused was above commercial quantity. The petitioner has relied on the decision of Hon'ble the Supreme Court in Chitta Biswas @ Subhas Vs. State of West Bengal in Criminal Appeal No. 245/2020 wherein it has been observed that :

*“4. According to the prosecution, the appellant was found to be in possession of narcotic substance i.e. 46 bottles of phensydryl cough syrup containing codeine mixture above commercial quantity.*

*5. The appellant was arrested on 21.07.2018 and continues to be in custody. It appears that out of 10 witnesses cited to be examined in support of the case of prosecution four witnesses have already been examined in the trial.*

*6. Without expressing any opinion on the merits or demerits of the rival submissions and considering the facts and circumstances on record, in our view, case for bail is made out. We therefore, allow this appeal and direct as under:*

*(a) Subject to furnishing bail bond in the sum of Rs.2 lakhs with two like sureties to the satisfaction of the Judge, Special Court, NDPS Act, Nadia at Krishnagar, the appellant shall be released on bail.*

*(b) The Special Court may impose such other conditions as it deems appropriate to ensure the presence and participation of the appellant in the pending trial.”*

8. The instant case is distinguishable from the case referred to by the petitioner. In this case 114 bottles of cough syrup were recovered from the co-accused of the petitioner. In his case, the petitioner earlier allegedly fled from his house during investigation and when he was directed to appear before the Trial Court by an order of this Court, he was forwarded to custody on 11.09.2023, Only 4 (Four) witnesses are cited as witnesses. Charges were framed on 22.09.2023. Trial has just commenced. It cannot be considered that the Court or the prosecution has procrastinated the trial. At this juncture, petition with prayer for bail is rejected. However, the petitioner is at liberty to

apply for bail if trial is procrastinated any further by the prosecution or by the Court. The Trial Court is directed to make every endeavour to expedite the trial for speedy disposal of this case.

9. In the above terms this Bail Application stands disposed of.

**JUDGE**

**Comparing Assistant**