

GAHC010041212024



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

Case No. : Bail Appln./571/2024

ABDUL RAZAK SHAH
S/O ABDUL SATTER
VILL- KWAKTA
P.S. MOIRANGI
DIST. BISHNUPUR,
MANIPUR,

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MOTIUR RAHMAN

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

Date : 20.04.2024

- 1)** Heard Mr. M. Rahman, learned counsel for the petitioner. Also heard Mr. M. P. Goswami, learned Additional Public Prosecutor for the State Respondent.
- 2)** This application under Section 439 of the Code of Criminal Procedure,

1973 has been filed by the petitioner, namely, Abdul Razak Shah, who is detained behind the bars since 01.10.2023 in connection with NDPS Case No. 04/2024 under Section 21(c)/29 of the NDPS Act, 1985.

3) The gist of accusation in this case is that on 01.10.2023, Saddam Ansari, SI of Police of Rani Police Out Post under Palashbari Police Station had lodged an FIR before the Officer-In-Charge of North Guwahati Police Station, *inter-alia*, alleging that on the basis of information received through secret sources that some miscreant would be transporting Narcotic Drugs through Kamrup District in an Ertiga vehicle and accordingly a search operation was conducted and 3 persons, namely, 1. Md. Yunus Khan, 2. Miss Jarina and 3. Bibi Sara were apprehended from the vehicle bearing Registration No.MN-06-L-6393, in which they were travelling. On search of the said vehicle, 250 gms of heroin packed in 20 soap boxes were found from the said vehicle. During interrogation, the apprehended accused persons informed that the supplier of the seized contraband was one Md. Abdul Razak Shah @ Babu of Manipur, who was staying in the room of present petitioner and who is also involved in drug trade.

4) On receipt of the FIR, North Guwahati P.S. Case No.116/2023 under Section 21(c)/29 of the NDPS Act, 1985, was registered during the course of investigation on 01.10.2023, the petitioner was also apprehended.

5) Learned counsel for the petitioner has submitted that nothing was seized from the possession of the present petitioner and the present petitioner has been apprehended only on the basis of statement of the co-accused. It is also submitted by the learned counsel for the petitioner that the present petitioner has been booked under Section 29 of the NDPS Act, 1985, however, no material is there to show that he has been involved in any conspiracy in the

present case with the other co-accused persons.

6) Learned counsel for the petitioner has also submitted that the quantity of contraband seized in this case weighed only 250 grams and as per Section (vii-a) of the NDPS Act, 1985, the definition of commercial quantity has defined in relation to narcotic drugs and psychotropic substances, means any quantity greater than the quantity specified by the Central Government by notification in the Official Gazette, and as per the learned counsel for the petitioner the notification issued by the Central Government specifies the commercial quantity of heroin mentioned in column No. 6 of row No. 56 and the seized contraband is 250 grams, and therefore, she submits that for being commercial quantity, the seized contraband has to be more than 250 grams which is not the case in the instant case and, therefore, the instant case is a case of intermediate quantity of contraband.

7) On the other hand, learned Additional Public Prosecutor has submitted that the trial court on 05th February, 2024 has framed charges against the present petitioner under Section 21(c) against the other accused persons as well as under Section 29 of the NDPS Act against the present petitioner and therefore, embargo of Section 37 is applicable in this case and hence opposed to grant the bail to the present petitioner.

8) I have considered the submissions made by the learned counsel for both the side and perused the scanned copy of case record of Special NDPS Case No. 04/2024.

9) Though, it appears that by order dated 05.02.2024, the trial court has framed charge under Section 29 of the NDPS Act against the present petitioner as well as under Section 21(c) against the other co-accused. However, it appears that the embargo of Section 37 of the NDPS Act shall be applicable in a

case only if the offences involved the said case are under Sections 19/24/27 of the NDPS Act or the offence involves commercial quantity of contraband. In the instant case, therefore, it is relevant to see that the contraband seized in this case are of commercial quantity or not.

10) Apparently, from the seizure list dated 01.10.2023, it appears that the quantity of contraband (suspected heroin) seized in 20 nos. of shop boxed weighed 250 grams only and as submitted by learned counsel for the petitioner the notification issued by the Central Government specifying limit of commercial quantity in row No. 56, where heroin has been shown at column No. 6, the quantity mentioned therein is 250 grams only.

11) As per Section 2(vii-a), commercial quantity in relation to narcotic drugs and psychotropic substances, means any quantity greater than the quantity specified by the Central Government by notification in the Official Gazette. As discussed herein before, the quantity mentioned in the said notification is 250 grams, therefore, to come within the purview of "commercial quantity", the weight of seized contraband has to be more than 250 grams and if it is 250 grams only it would be treated as intermediate quantity only.

12) Under above circumstances, this court is of considered opinion that embargo of Section 37 of the NDPS is not applicable in this case. As the petitioner has already been detained behind the bars for last 191 days and as observed herein before the quantity of heroin seized in this case is found to be of intermediate quantity, the above named petitioner is allowed to go on bail of Rs.50,000/- (Rupees Fifty thousand) with two sureties of like amount subject to the satisfaction of learned Special Judge, Kamrup, Amingaon, with following conditions that:-

- i. The petitioner shall not directly or indirectly make any

inducement, threat or promise to the informant or to any other persons who may be acquainted with the facts of the case so as to dissuade such person from disclosing such facts before the Investigating Officer or to any Court; and

ii. The petitioner shall co-operate in the investigation.

13) With the above observation, this bail application is hereby disposed of.

14) The observation made above are only for the purpose of consideration of the instant bail application and it would not in any way affect the trial pending against the present petitioner.

JUDGE

Comparing Assistant