

GAHC010043912024



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

Case No. : Bail Appln./584/2024

AMIR ALI
R.O - JHAGRAPAR PT- IV, P.S - DHUBRI, DIST - DHUBRI, ASSAM

VERSUS

THE STATE OF ASSAM
REPRESENTED BY PP ASSAM

Advocate for the Petitioner : MR. M HUSSAIN

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN

ORDER

Date : 10.04.2024

Heard Mr. M. Hussain, learned counsel for the accused and also heard Mr. R.J. Barua, 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 **Amir Ali**, who has been languishing in jail hazot in connection with **Special Case No. 41/2024** (arising out of **Dhubri P.S. Case No. 345/2023**), under Sections 20(c)/29 NDPS Act, for granting bail.

3. It is to be noted here that **Dhubri P.S. Case No. 345/2023**, has been

registered on the basis of an FIR lodged by SI Deepjyoti Engti of Dharamsala W.P. on 01.09.2023. The essence of allegations made in the FIR is that acting on a tip off on 31.08.2023, the informant and other police staffs, at about 12.30 a.m., had conducted raid in the house of one Rofiqul Hoque @ Mirajul Hoque of Kachuawarkhash Pt. II and recovered 9 grams of suspected heroin and 288 numbers of Spas-Trancan Plus Capsules and thereafter, conducted search in the house of Abubakkar Siddique situated at Kismat Hasdaha Pt.-IV and apprehended him and thereafter conducted search in the house of Shahidul Islam Bepari @ Pintu of Dharamsala Pt. IV and recovered 190 Nos. of Yaba Tablets and 288 Nos. of Spas Trancan Capsules from his house and seized the same in presence of witnesses.

4. The allegation against the present accused is that during investigation it has comes to light that he is also a drug peddler and involved in dealing with contraband substances along with the co-accused.

5. Mr. M. Hussain, learned counsel for the accused submits that the accused was arrested on 04.09.2023, and since then he has been languishing in jail hazoot for last 218 days. It is the further submission of Mr. Hussain, that nothing has been recovered from the possession of the present accused and he was arrested on the basis of statement of co-accused and the same is not admissible in evidence. Further, Mr. Hussain submits that the accused is ready to face trial and will appear before the learned court below regularly and therefore it is contended to allow this petition.

6. Whereas, Mr. Baruah, learned Additional Public Prosecutor submits that the quantity of contraband substance allegedly recovered from the possession of co-accused are of commercial quantity and as such, the embargo under Section 37 of the NDPS Act will come into play and that there is nothing on the record, as

to how the accused will satisfy the aforesaid requirement. Mr. Baruah further submits that the investigation has culminated in submission of charge sheet against the present accused and other co-accused under section 20(c)/29 NDPS Act and charge has also been framed against the accused under the said section of law and the case is pending for evidence 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 case diary with the assistance of learned Additional Public Prosecutor.

8. Indisputably, the quantity of contraband substance recovered from the possession of the co-accused are of commercial quantity and as such, the embargo under Section 37 of the NDPS Act will come into play here in this case. And from the materials placed on record and also from the case diary as well as from the submission of the learned counsel for the accused, this Court is unable to derive its satisfaction that the accused Amir Ali is not guilty of the offence and that he will not commit similar offence while on bail.

9. It is, however, a fact that the contraband substances were not recovered from the possession of the present accused, yet, the same does not absolve it of level of scrutiny required under section 37(1) (b) (ii) of NDPS Act, as held by Hon'ble Supreme Court in **Union of India through NCB, Lucknow vs. Nawaz Khan** reported in **(2021) 10 SCC 100**, since the contraband substances recovered from the possession of the co-accused is of commercial quantity. So, the accused has to satisfy the twin requirement of section 37 of the NDPS Act.

10. It is to be mentioned here that in the case of **Union Of India vs. Ajay Kumar Singh @ Pappu**, Criminal Appeal No. 952 OF 2023 [Arising out of SLP (CRL.) No.2351 OF 2023], decided on 28 March, 2023, Hon'ble Supreme Court, while setting aside the order of granting bail, by the Allahabad High Court, to the accused involving in commercial quantity of contraband substance, has held as under:-

“In view of the above provisions, it is implicit that no person accused of an offence involving trade in commercial quantity of narcotics is liable to be released on bail unless the court is satisfied that there are reasonable grounds for believing that he is not guilty of such an offence and that he is not likely to commit any offence while on bail.”

11. In view of the above and also in view of the embargo under Section 37 of the NDPS Act, this Court is of the view that it is not a fit case where the privilege of bail can be extended to the accused. It is well settled by Hon'ble Supreme Court in the case of **NCB vs. Mohit Agarwal**, reported in **[2022] 0 Supreme (SC) 619**, that liberal approach in the matter of bail, under the NDPS Act is indeed uncalled for.

12. Under the aforementioned facts and circumstances, this Court is of the view that this is not a fit case to grant the privilege of bail to the accused.

13. In the result, the petition stands dismissed. However, the learned court below is directed to make an endeavour to complete trial with in earliest possible time and if necessary to take recourse to section 309(1) Cr.P.C.

JUDGE

Comparing Assistant