

GAHC010060472024



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

Case No. : Bail Appln./840/2024

MD. SHOYJUDDIN AHMED @ SALLU
S/O LATE BILLAL HUSSAIN
R/O VILL- JAMLAI, HEKRATARI
P.S. NAGARBERA,
DIST. KAMRUP, ASSAM

VERSUS

THE STATE OF ASSAM
REP BY THE PP, ASSAM.

Advocate for the Petitioner : MR. B CHOWDHURY

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

10.04.2024

- 1.** Heard Mr. B. Chowdhury, learned counsel for the petitioner. Also heard Mr. B. Sarma, learned Additional Public Prosecutor, Assam.
- 2.** This application under section 439 of the Code of Criminal Procedure, 1973 has been filed by the petitioner, namely, Md. Shoyjuddin Ahmed @ Sallu,

who has been detained behind the bars since 12.03.2024 (for last 28 days) in connection with Palashbari P.S. Case No. 86/2024 (corresponding to G.R. Case No. 276(K)/2024 under Section 21(c)/29 of the NDPS Act, 1985.

3. The gist of accusation in this case is that on 02.03.2024, one Arup Pathak had lodged an FIR (First Information Report) before the Officer-In-Charge of Palashbari Police Station, *inter-alia*, alleging that on 02.03.2024, on receipt of an information received through secret sources that some drug peddlers would be carrying narcotics from Mankachar to Guwahati, a Naka Checking was carried on at NH- No. 17, Bongara Last Gate and during Naka Checking operation, two accused persons, namely Md. Ziaul Hassan @ Tumun and Arsad Ali were apprehended and 262 grams of suspected heroin were recovered from their possession. On the basis of the FIR, Palashbari P.S. Case No. 86/2024 under Section 21(c)/29 of the NDPS Act, 1985 was registered.

4. During the course of the investigation, the apprehended person confessed that the seized materials were brought from the present petitioner and accordingly, the present petitioner was apprehended and his residence was also searched and during the search operation, 10 numbers of bottles of codeine cough syrup, weighing 100 ml each bottle containing codeine phosphate were recovered and seized.

5. Learned counsel for the petitioner has submitted that the petitioner has been apprehended only on the basis of statements made by a co-accused Md. Ziaul Hassan @ Tumun and Arsad Ali and nothing was seized. At the first instance, when the seizure of 262 grams of suspected heroin was made, and there is no material on record apart from the statement of the co-accused to connect him with the seizure of the heroin.

6. Learned counsel for the petitioner has also submitted that as regards

seizure of the codeine phosphate is made, it is he the petitioner is a licensed drug dealer and he has a valid license to sell, stock or exhibit the drugs other than those drugs which are specified in Schedule 'X' as mentioned in the licensed which is annexed as Annexure-3 of the bail application.

7. It is also submitted by the learned counsel for the petitioner that even if it is assumed that 10 bottles of codeine cough syrup were seized from the possession of the present petitioner, the total quantity of cough syrup containing 10 bottles would be 1 litre only as each bottle contained 100 ml of cough syrup.

8. The learned counsel for the petitioner has also submitted that if the quantity of cough syrup which was seized is converted into mass/weight, it would come less than 1 Kg.

9. In this regard, the learned counsel for the petitioner has also cited a ruling of the "***High Court of Jammu and Kashmir in the case of Firdous Ahmad Payer Vs. State of Jammu & Kashmir*** reported in ***2018 0 Supreme (J&K) 1000***," where the court had observed that when 1 litre of water is converted into mass, it comes to 958 grams and when the same formula is applied to seized contraband, i.e. 10 bottles of 100 ml each contraband, it would be less than 1 Kg.

10. The learned counsel for the petitioner therefore submits that the contraband seized in this case from the possession of the present petitioner would be of intermediate quantity and considering the period of detention already undergone by the present petitioner, he may be allowed to go on bail.

11. On the other hand, learned Additional Public Prosecutor has vehemently opposed the grant of bail to the present petitioner on the ground that the quantity of cough syrup seized from the present petitioner is of commercial quantity. He has also submitted that even if it is assumed that the quantity is of

intermediate quantity, still considering the fact that the petitioner has criminal antecedents as he was earlier involved in three similar cases and as the investigation is pending, further time is required for completion of investigation. Hence, at this stage bail should not be granted to the present petitioner.

12. I have considered the submissions made by the learned counsel for both the parties and have perused the materials available on record, including the case diary of Palashbari P.S. Case No. 86/2024.

13. It appears from the record that as regards the seizure of 262 grams of heroin is concerned, the only material against the present petitioner is the statement of the co-accused who were apprehended with the said contraband, wherein they have incriminated the present accused. The statement of the co-accused against the present petitioner is not admissible in evidence as held by the Apex Court in the case of "**Tofan Singh Vs. State of Tamil Nadu** reported in (2021) 4 SCC 1."

14. Now as regards the seizure of the contraband which was recovered from the residence of the present petitioner, it appears that seizure list shows that the total quantity of cough syrup seized was 100 ml, however, the notification issued by Union Government specifying the commercial quantity of narcotics and psychotropic drugs, shows the quantity of drugs in mass, i.e., in Kg, since the prosecution side has not specified the weight of the seized codeine syrup in Kgs, the petitioner is given benefit of the observation made by the High Court of Jammu & Kashmir in the case of **in the case of Firdous Ahmad Payer** (supra), wherein, it is observed that 1 litre of codeine phosphate would be less than 1 Kg. If we go by that observation the quantity of seized contraband in this case from the possessions of the present petitioner would be of intermediate quantity.

15. Now, if we consider the contraband seized from the possession of the present petitioner as of intermediate quantity, we have to consider as to whether 29 days are sufficient for completing the investigation and whether further custodial detention of present petitioner is required or not. Though criminal antecedents of the present petitioner have been cited and which certainly goes within the present petitioner, however, considering the progress made in this case, all the seizure witnesses have been examined, and it appears that as regards the seizure of codeine phosphate, the investigation is pending only for receipt of the FSL report, for which the custodial detention of the present petitioner, in the considered opinion of this court would not be necessary.

16. In view of above, the above named petitioner is hereby directed to be released on bail on furnishing a bond of Rs. 30,000/- with a suitable surety of like amount to the satisfaction of the learned Special Judge, Kamrup (Amingaon) with conditions that:-

- i. the petitioner shall appear before the Investigating Officer of Palashbari P.S. Case No. 86/2024 as and when so required for the sake of fair completion of the investigation;
- ii. That the petitioner shall not directly or indirectly make any inducement, threat, or promise to any person who may be acquainted with the facts of the case, so as to dissuade such person from disclosing such facts before the trial court in the trial pending against the present petitioner;

17. With the above observations, this bail application is hereby disposed of.

18. Send back the case diary.

JUDGE

Comparing Assistant