

GAHC010061932024



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

Case No. : Bail Appln./880/2024

ABDUL HOQUE
S/O LATE IMAN ALI
VILL- RAJABALA
P.S. PHULBARI
DIST. WEST GARO HILLS, MEGHALAYA

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PP, ASSAM

Advocate for the Petitioner : MOTIUR RAHMAN

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA

ORDER

Date : 09.05.2024

Heard Mr. A. S. Tapader, learned counsel for the petitioner. Also heard Mr. B. Sharma, learned Additional Public Prosecutor for the State respondent.

2. This is an application under Section 439 of the Code of Criminal Procedure, 1973, praying for grant of bail to the accused/petitioner, who has been arrested in connection with NDPS Case No. 161/2023, under Sections 29 of the NDPS Act, pending before the Court of learned Additional Sessions Judge No. 5, Kamrup (M), arising out of Jalukbari P.S. Case No. 269/2023.

3. Scanned copy of the LCR has been received. Perused the same. Heard both sides.

4. It is submitted by Mr. A. S. Tapader, learned counsel for the petitioner, that in the present case, charge has already been framed against the present accused/petitioner along with other co-accused persons. Further he submitted that this is a subsequent bail application after the rejection of the earlier bail application vide order dated 07.03.2024, passed in Bail Appln. No. 127/2024. He further submitted that on the basis of an information, the police made a search in the Public Transport Bus and on Naka Checking, 9200 numbers of suspected YABA tablets were found inside the bag and the prime accused person was arrested accordingly and on the basis of the statement made by the co-accused only, the present accused/petitioner was arrested in connection with this case. However, no contraband was seized from the possession of the accused/petitioner except 2 (two) mobile handset, 1 (one) car and a cash amount of Rs. 38,000/-. More so, he is behind the bar for more than last 1 (one) year in connection with this case. The only allegation against the present accused/petitioner is that he was staying in the same hotel with the co-accused person at Hotel New Castle at Bharalumukh and that apart, the main accused,

namely, Motibar Bhuyan, was known to him. Thus, on the basis of some call details, the present accused/petitioner was arrested from the Hotel Room No. 301, but no suspected contraband was recovered from his possession at the time of his arrest. He further submitted that except the statement made by the co-accused under Section 67 of the NDPS Act, there is no other materials with the prosecution to arrest the present accused/ petitioner with the allegations of drug trafficking. More so, the confessional statement of the co-accused recorded under Section 67 of the NDPS Act is admissible even at the stage of consideration of bail. Further, the accused/petitioner, being the permanent resident of his addressed locality, there is no chance of absconding nor there is any criminal antecedent of the accused/petitioner. Rather, he will regularly appear before the learned Court below on each and every date and will contest the case.

5. In support of his submission, the learned counsel for the petitioner further relied on the decision of Hon'ble Apex Court passed in **Tofan Singh Vs. State of Tamil Nadu [(2021) 4 SCC 1]** as well as another judgment of Hon'ble Apex Court passed in **Union of India (NCB) Etc. Vs. Khalil Uddin [2022 Live Law (SC) 878]**.

6. In this context, Mr. Sharma, learned Additional Public Prosecutor, has submitted that there are sufficient incriminating materials available against the present accused/petitioner in the Case Diary. More so, it is a case of commercial quantity and hence, the rigor of Section 37 NDPS Act will follow and unless there is satisfaction that the accused/petitioner is not guilty of such offence or he is not likely to commit similar offence on bail. But, here in the instant case, it is seen that there are sufficient incriminating materials against the present

accused/petitioner and considering the same, the charge has already been framed against the present accused/petitioner along with other co-accused persons by the Court of learned Additional Sessions Judge No. 5, Kamrup(M), Guwahati, vide its order dated 14.03.2024, and the case is also fixed for evidence on 25.04.2024. Thus, the trial has already been initiated and the case is fixed for evidences of the prosecution witnesses. Further he submitted that while rejecting the earlier bail application by this Court, all the grounds were taken into consideration and hence, on the same ground, the second and subsequent bail application cannot be entertained as in earlier bail application, there was a detail discussion about the grounds taken on behalf of the petitioner. Accordingly, he submitted that this is not at all a fit case to allow the accused/petitioner go on bail at this stage and the probability of absconding also cannot be denied as the case is of commercial quantity and the petitioner also hails from other State and hence, there may be difficulty on the part of the learned Court below to secure the attendance of the petitioner if he is allowed to go on bail.

7. After hearing the submissions made by the learned counsels for both sides, I have also perused the scanned copy of the LCR and it is seen that the case has already been Charge-Sheeted, charge has already been framed and the case is at the stage of trial. More so, it is the case of commercial quantity and hence, the rigor of Section 37 NDPS Act will follow. But, from the available materials in the case record as well as in the Case Diary, there is no reason to believe that the accused/petitioner is not guilty of such offence or he is not likely to commit such offence while on bail.

8. The Hon'ble Apex Court in the case of **State by the Inspector of Police Vs. B. Ramu** had expressed the view that in case of commercial quantity, the Court should be slow in granting anticipatory bail even regular bail to the accused.

9. So, considering the submission made by the learned counsels for both sides, materials available in the case record as well as in the Case Diary, nature of offence and the punishment prescribed for the same, I find that it is not a fit case to allow the accused to go on bail only on the ground that he was arrested during the investigation of the case on the basis of the statement of the co-accused recorded under Section 67 of the NDPS Act. More so, I do not find any new or urgent ground to consider his bail application which was earlier rejected by this Court on perusal of the Case Diary and discussing all the grounds taken on behalf of the accused/petitioner. Resultantly, the bail application stands rejected. However, the learned Court below is hereby directed to expedite the trial proceeding with an effort to dispose of the matter as earliest as possible.

10. In terms of above, this bail application stands disposed of.

JUDGE

Comparing Assistant