

GAHC010066992024



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

Case No. : Bail Appln./956/2024

MD. UBAYDUR RAHMAN
S/O MD. ABDUL NOOR,
R/O VILL- MAZAGRAM ERALIGOOL PART-I,
P.S. PATHARKANDI
DIST. KARIMGANJ, ASSAM

VERSUS

THE STATE OF ASSAM
REP BY THE PP, ASSAM

Advocate for the Petitioner : MR. S MUNIR

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA

ORDER

02.04.2024

Heard Mr. S. Munir, learned counsel for the petitioner. Also heard Mr. M.P. Goswami, learned Addl. P.P., Assam appearing for the State respondent.

2. The petitioner has approached this Court for the second time for grant of

bail in connection with **NDPS Case No.60/2023** arising out of **Guwahati GRPS Case No.163/2022** registered under Sections **21(c)/29** of the ND&PS Act, 1985 pending before the Court of learned District and Sessions Judge, Kamrup(M) at Guwahati, on the ground that the co-accused Md. Majibur Rahman @Mujibur Rahman has been granted bail by a co-ordinate Bench of this Court vide order dated 05.01.2024 passed in Bail Appln. No.2479/2023.

3. The petitioner's counsel submits that as the co-accused has been granted bail, the petitioner should also be granted bail. He further submits that while charge-sheet has been submitted on 13.05.2023, charges have not been framed till date, inasmuch as, the 4th co-accused Md. Hussain Ahmed is still absconding.

4. Mr. M.P. Goswami, learned Addl. P.P., on the other hand, submits that no case for bail has been made out, inasmuch as, the co-accused Md. Majibur Rahman @Mujibur Rahman has been released on bail on account of the heroin having been recovered only from the possession of the petitioner and one Adud Ahmed. Accordingly, the co-ordinate Bench in Bail Appln. No. 2479/2023 had held that as Md. Majibur Rahman @Mujibur Rahman was arrested on the basis of statement made by the co-accused, which was inadmissible in evidence, said Majibur Rahman was released on bail.

5. I have heard the learned counsels for the parties.

6. The facts of the case is that 1 k.g of heroin had been seized from the possession of the petitioner herein and one Adud Ahmed. The co-accused Md. Majibur Rahman @Mujibur Rahman had been arrested on the basis of

statements made by the co-accused. The coordinate Bench of this Court, vide order dated 05.01.2024 passed in Bail Appln. No.2479/2023, had granted bail to Md. Majibur Rahman @Mujibur Rahman in terms of the judgment of the Supreme Court in the case of ***Tofan Singh Vs. State of Tamil Nadu***, reported in ***(2021) 4 SCC 1***, wherein it held that the statement of a co-accused recorded under Section 67 of the ND&PS Act is inadmissible in evidence against a co-accused.

7. The petitioner herein had applied for bail earlier vide Bail Appln. No.3617/2023 and the same had been rejected vide order dated 09.10.2023.

8. On considering the provisions of Section 37 of the ND&PS Act, this Court does not find any reason to grant bail at this stage.

9. Accordingly, the bail application is rejected.

JUDGE

Comparing Assistant