

GAHC010093242024



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

Case No. : Bail Appln./1339/2024

BODIOT ZAMAN @ BODIOR ZAMAN
S/O LATE RAHAM ALI,
RESIDENT OF VILLAGE MARIOM NAGAR, PS GOALPARA, DIST
GOALPARA, ASSAM

VERSUS

THE STATE OF ASSAM
REP BY PP ASSAM

Advocate for the Petitioner : MR J HUSSAIN

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

Date : 26.06.2024

- 1.** Heard Mr. J. Hussain, learned counsel for the petitioner. Also heard Mr. K. K. Parasar, 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 Bodiot Zaman @ Bodior Zaman,

who has been detained behind the bars since 20.07.2023 (for more than last 11 months), in connection with Goalpara P. S. Case No. 103/2023 under Section 22(C)/29 of the NDPS Act, 1985, pending before the Court of learned Special Judge, Goalpara.

3. The gist of the accusation in this case that on 13.06.2023, one B. Roy, SI of Goalpara Police Station, lodged an FIR before the Officer-in-Charge of Goalpara Police Station, *inter- alia*, alleging that on 13.06.2023 at about 2.00pm, one information was received through a reliable source by the police to the effect that one Nazmul Hoque of Moriom Nagar, Goalpara was suspected of keeping illegal drugs and distributing the same to the youths.

4. On receipt of the said information, a search team was conducted and same proceeded to house of the said Nazmul Haque and on the same day, the house of the Nazmul Haque was searched. During search operation total, 1224 numbers of Spascore capsules were recovered therefrom. After seizure of the recovered contraband, the owner of the house, namely Nazmul was interrogated and during interrogation, he revealed that the present petitioner, namely, Bodiot Zaman was involved in illegal business of psychotropic substance.

5. On receipt of the said FIR, Goalpara Police Station Case No. 103/2023 was registered and investigation was initiated. Ultimately, on completion of investigation, charge sheet No.144/2023 was laid dated 31.10.2023 against two accused persons, namely, No.1 Nazmul Hoque and No.2 Bodiot Zaman, the present petitioner, under Section 22(C)/29 of the NDPS Act, 1985 and 12 numbers of witnesses were listed in the charge sheet.

6. Thereafter, on 18.01.2024, charges were framed against the accused

persons, including the present petitioner, to which the present petitioner pleaded not guilty.

7. Learned counsel for the petitioner has submitted that nothing was seized from the possession of the present petitioner and he has been implicated in this case solely on the basis of statement of the co-accused recorded under Section 67 of the NDPS Act, 1985.

8. Learned counsel for the petitioner has also submitted that in the case of “**Toofan Singh Vs. State of Madras** reported in **(2021) 4 SCC, 1**”, wherein it was held by the Apex Court that a confessional statement recorded under Section 67 of the NDPS Act, 1985 is inadmissible in trial of an offence under NDPS Act, 1985.

9. Learned counsel for the petitioner has submitted that since there is no material against the present petitioner on record except the statement of the co-accused Nazmul Haque, in which he has implicated the present petitioner, there is no admissible evidence on record against the present petitioner and therefore, the petitioner is entitled to be released on bail.

10. On the other hand, learned Additional Public Prosecutor has submitted that this case involves commercial quantity of contraband and therefore, the embargo of Section 37 of the NDPS Act, 1985 is applicable in this case and on that ground, he opposes the grant of bail to the present petitioner.

11. However, learned Additional Public Prosecutor also fairly admits that from evidence and materials on record, it appears that the only material against the present petitioner on record is the statement of co-accused Nazmul Haque, which was recorded by the Investigating Officer during investigation.

12. I have considered the submissions made by learned counsel for the rival parties and have perused the materials available on record, including the scanned copy of the case record of Special NDPS Case No. 33/2023, as well as case diary of Goalpara P.S. Case No.103/2023.

13. It appears from record that the contraband was seized from the residence of co-accused Nazmul Haque and nothing was seized from the conscious possession of the present above-named petitioner.

14. It appears from record that the only incriminating material against the present petitioner which is available on record is the statement of the co-accused Nazmul Haque, recorded under Section 67 of the NDPS Act. There appears to be no admissible evidence on record against the present petitioner.

15. The Apex Court has held in the case “**Toofan Singh Vs. State of Madras (Supra)**”, that the statement of the co-accused recorded under Section 67 of the NDPS Act, 1985 is inadmissible in evidence and cannot be used as a confessional statement in the trial of an offence under NDPS Act, 1985. There appears to be no admissible evidence on record against the present petitioner. Hence, the embargo of section 37 of the NDPS Act would not be applicable against the present petitioner in the instant case. The petitioner is therefore, liable to be released on bail.

16. For the reasons stated hereinabove, the above-named petitioner, namely, Bodiot Zaman @ Bodior Zaman, is hereby allowed to be released on bail of Rs. 50,000/- (Rupees Fifty Thousand only) with one surety of like amount to the satisfaction of learned Special Judge, Goalpara with following conditions:

- i. that the petitioner shall regularly appear before the Trial

Court and cooperate in his trial.

ii. that the petitioner shall not directly or indirectly make any inducement, threat or promise to any of the listed witnesses or any other person who may be acquainted with the facts of this case, so as to dissuade such person from disclosing such facts before the Trial Court in the pending trial against him.

17. It is hereby clarified that the observations made in this order are only for the purpose of consideration of the instant bail application and it shall have no impact in the pending trial against the present petitioner and the Trial Court shall decide the questions which may arise in the trial independent of any observation made by this Court while considering the instant bail application.

18. With above observation, this bail application is hereby disposed of.

JUDGE

Comparing Assistant