

GAHC010098942024



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

Case No. : Bail Appln./1445/2024

MD. IDRISH ALI
S/O LATE ABDUL HASSEN
VILL- DHINGARHATI
P.O. MORIGAON-782127,
P.S.LAHORIGHAT
DIST. MORIGAON, ASSAM

VERSUS

THE STATE OF ASSAM
REP BY THE PP, ASSAM

Advocate for the Petitioner : MR. B K SEN

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

27.06.2024

1. Heard Mr. B. K. Sen, learned counsel for the petitioner. Also heard Mr. R. R. Kaushik, learned Additional Public Prosecutor, Assam appearing

for the State respondent.

2. This application under section 439 of the Code of Criminal Procedure, 1973 has been filed by the petitioner, Md. Idris Ali, who has been detained behind the bars since 18-10-2023, in connection with NDPS Case No. 136/2024, corresponding to STF P.S. Case No. 15/2023, under section 22(c)/29 of the NDPS Act, 1985 pending before the Court of learned, Additional Sessions Judge No. 5, Kamrup Metro.

3. The gist of accusation in this case is that, on 17-10-2023, one Premankur Hazarika of STF Police Station, had lodged an FIR before the Officer-In-Charge of SDF Police Station, *inter alia*, alleging that on 17-10-2023, at about 6.30 AM, one information was received through reliable sources by the Additional SP (Headquarters), Kamrup-cum-Additional SP, STF regarding transaction of drugs at near Triveni Lodge, located in front of Rahman Hospital, at Six mile, Guwahati and accordingly, a search team of police was put into action and 51,400 Yaba tablets containing methamphetamine were recovered from the possession of three accused persons, including the present petitioner.

4. On receipt of the FIR, STF P.S. Case No. 15/2023 was registered and investigation was initiated.

5. Ultimately, after completion of investigation, charge sheet was laid on 05-04-2024, and learned counsel for the petitioner has submitted that nothing was recovered from the possession of the present petitioner and he has been implicated.

6. The learned counsel for the petitioner has submitted that, though the petitioner has been detained behind the bars for more than eight months, however, the case is pending at the stage of furnishing copies of documents to the accused persons under section 207 of the Code of Criminal

Procedure and hence there is no scope of early culmination of trial.

7. The learned counsel for the petitioner has also submitted that nothing was seized from the conscious possession of the present petitioner and he has been implicated in this case under section 29 of the NDPS Act only with an accusation of his involvement as a conspirator in commission of the alleged offence.

8. The learned counsel for the petitioner has submitted that the Apex Court in many of its judgment have laid down that, in case of prolonged incarceration, the accused will get bail benefit of bail if there is no hope of early culmination of trial and it is submitted that, in the instant case also, the petitioner has been languishing behind the bars for last 8 months.

9. On the other hand, learned Additional Public Prosecutor has submitted that in the instant case there are sufficient incriminating materials against the present petitioner on record and as the quantity of contraband seized in this case is of commercial quantity, the embargo of section 37 of the NDPS Act is applicable to this case. Hence, he has opposed the grant of bail to the present petitioner.

10. I have considered the submissions made by learned counsel for both the sides and have perused the scanned copy of the case record of NDPS Case No. 136/2024, which was called for in connection with this case. Though the petitioner was arrested on 17-10-2023 and has been detained behind the bars from more than 8 months, however, it appears that the charge-sheet in this case has been laid only on 5th April 2024.

11. It also appears that the quantity of contraband seized in this case is of commercial quantity, hence, apparently, embargo of section 37 is applicable in this case.

12. Though it is true that in case of prolonged incarceration, the fundamental right guaranteed under Article 21 of the Constitution of India would override the embargo of section 37 of the NDPS Act, 1985. However, before applying that principle, the Court has to arrive at a conclusion that the detention undergone by the petitioner under the facts and circumstances of this case is long enough which does not appears to be the case in the instant case.

13. In the instant case, as the charge sheet has been laid only on 05-04-2024 and the petitioner has been detained behind the bars for less than one year, this Court is of considered opinion that considering the quantity of contraband seized in this case, 51,400 Yaba tablets, the period of detention undergone by the petitioner may not be regarded as long enough, so as to override the embargo of section 37 of the NDPS Act, 1985.

14. Hence, this Court is not inclined to grant bail to the petitioner at this stage owing to the embargo of section 37 of the NDPS Act, 1985.

15. The prayer for bail of the petitioner is, therefore, rejected.

16. This bail application is accordingly dismissed.

JUDGE

Comparing Assistant