

GAHC010110522024



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

Case No. : Bail Appln./1609/2024

ABDUL KHALEQUE
S/O FASIYAT ALI
VILL- SINGIMARI PART-I,
P.O. TISTERPAR
P.S. AND DIST. DHUBRI, ASSAM

VERSUS

THE STATE OF ASSAM
REP BY THE PP, ASSAM

Advocate for the Petitioner : MD K RAHMAN, MR. N. ISLAM
Advocate for the Respondent : PP, ASSAM,

BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI

ORDER

31.07.2024

1. Heard Mr. K. Rahman, learned counsel appearing for the accused petitioner as well as Mr. R. J. Baruah, learned Addl. P.P., Assam appearing for the State respondent.
2. By filing this second bail application under Section 439 Cr.P.C., the accused-petitioner, namely, **Abdul Khaleque**, has prayed for grant of bail in connection with **Special (NDPS) Case No.332/2023 arising out of Dhubri PS Case No. 370/2023** under Section **22(C) of NDPS Act**.
3. The background of the case is that on 14.09.2023, an FIR has been lodged

before the officer in-charge, Dhubri PS stating *inter alia* that the petitioner used to sell narcotic drugs since long in the area of Shingimari Part-I village and large quantity of narcotic drug were kept in his house for sale. Accordingly, search was conducted and during house search, police found the petitioner in his house and suspected psychotropic substance were recovered from the bedroom of the petitioner which was kept concealed under the blanket and seized the same from the possession of the petitioner in presence of the independent witnesses. Subsequently, the petitioner was arrested.

4. Learned counsel for the petitioner has submitted that the petitioner has been languishing in judicial custody for last 224 days since his arrest on 14.09.2023. Out of nine witnesses, four witnesses have already been examined. PW-2, 3 and 4 are the independent seizure witnesses but they did not support the prosecution case regarding seizure of contraband items from the house of the petitioner. From their deposition it is reflected that the seizure list was not prepared as per provision of law in presence of the independent witnesses. Hence, it is reasonable grounds for believing that the accused is not guilty of such offence. It is further submitted that there is no criminal antecedent against the accused petitioner as such he is not likely to commit any offence while on bail.

In support of his submission learned counsel has relied on the following case laws:

- (1) *Md. Muslim @ Hussain vs State (NCT of Delhi) reported in (2023) O Supreme SC 289.*
- (2) *2G Scam case reported in (2012) 1 SCC 40.*
- (3) *(2024) O Supreme SC 520 (Javed Gulam Nabi Sheikh vs State of*

Maharashtra).

(4) (2024) O Supreme SC 600 (Sheikh Javed Eqbal @ Ashfaq Ansari @ Javed Ansari vs State of Uttar Pradesh).

5. In response, Mr. R. J. Baruah, learned Additional Public Prosecutor submits that commercial quantity of narcotic substance was recovered from the house of the petitioner. Out of nine witnesses, four witnesses have already been examined. Some other witnesses are yet to be examined in this case. As such, it cannot be said at this stage that the case is not proved against the petitioner beyond reasonable doubt. It is further submitted that PW-1 has implicated the petitioner to be involved in the case. Under such backdrop, learned Additional Public Prosecutor has opposed in granting bail to the petitioner.

6. I have considered the submission of the learned counsel for the parties and also perused the trial court record including the evidence of the witnesses.

7. It appears from the record that the accused was arrested on 14.09.2023 and charge-sheet has been laid within the prescribed time limit. Subsequently, charge was framed on 21.12.2023. Thereafter, within such seven months, out of nine witnesses, four witnesses have been examined. Hence, there is no procedural delay on the part of the trial court.

8. The grant of bail in NDPS cases where the recovery of commercial quantity of narcotic drugs is alleged, is circumscribed under the Narcotic Drugs and Psychotropic Substances Act, 1985. Section 37 which says that before grant of bail, the Court must have reason to believe that the petitioner had not committed the offence and in the event of his release, he would not commit similar offence.

9. The issue was considered by the Hon'ble Supreme Court in the case of

State of Kerala and others vs Rajesh, reported in (2020) 12 SCC 122 as well as in the case of *Narcotic Control Bureau vs Mohit Agarwal* reported in AIR 2022 SC 344 and *Union of India vs Ajay Kumar Singh @ Pappu*, reported in (2023) SCC online SC 3456.

10. In the case in hand, the recovery of huge quantity of narcotic drugs from the house of the petitioner would not justify that the petitioner had no knowledge of the narcotic drugs nor there is any material to substantiate that the petitioner would not commit such offence in the event of his release.

11. In view of the above, at this stage, this Court is not inclined to grant bail to the petitioner. However, the trial court is directed to expedite the trial.

12. Accordingly, the bail application stands rejected.

13. In terms of the above, this bail application stands disposed of.

JUDGE

Comparing Assistant