

GAHC010120012024



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

Case No. : Bail Appln./1756/2024

MD. SADDAM
S/O WASHI AKHTAR
R/O N.K. DARRANGA
P.S. TAMULPUR
DIST. TAMULPUR, ASSAM

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PP, ASSAM

Advocate for the Petitioner : MR. H.R.A. CHOUDHURY

Advocate for the Respondent : PP, ASSAM

**BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA
ORDER**

18.07.2024

Heard Mr. H.R.A. Choudhury, learned Senior counsel assisted by Ms. G. Deka, learned counsel for the petitioner. Also heard Mr. P. Borthakur, learned Additional Public Prosecutor for the State respondent.

2. This application filed under Section 439 of the Code of Criminal Procedure, 1973, praying for grant of bail to the accused/petitioner, who is languishing in jail hazot since 28.11.2023 in connection with Special P.S. Case No.11/2024 registered under Section 22(C) of NDPS Act.

3. The scanned copy of the Case Record and the Case Diary has already been received and I have perused the same.

4. The learned counsel for the petitioner, Mr. Choudhury, submits that the alleged contraband was recovered from a motorcycle that does not belong to the petitioner, and thus there is no recovery of the contraband from the petitioner's conscious possession. Moreover, the petitioner has been in custody since 28.11.2023, and considering the length of his detention, he may be granted bail. He further contends that there is no evidence against the petitioner regarding the recovery of the alleged contraband from his conscious possession. It is also submitted that the case has already been charge-sheeted, and there is no question of hampering or tampering with the investigation, rather he submits that the petitioner being the permanent resident of the address locality, he will appear before the learned Trial Court on each date fixed

for trial, if the same is allowed.

5. In this context, the learned Additional Public Prosecutor, Mr. Borthakur, has submitted that the FIR was lodged on 27.11.2023, and the accused/petitioner was arrested on 28.11.2023. The charge sheet was submitted within the stipulated period of time, i.e. on 21.03.2024 and thereafter, the Trial Court framed charges against the accused/petitioner on 06.05.2024, under Section 22(C) of the NDPS Act. He further submits that out of the 16 witnesses, 4 have already been examined, indicating that the case is proceeding expeditiously, and it is expected that the trial will conclude in a short period. Moreover, he submitted that the contraband was recovered from the petitioner's motorcycle, and a significant quantity of contraband was also recovered from his rented premises. Thus, there is sufficient incriminating materials is available against the accused/petitioner. Accordingly, at this stage, he raised objection in granting bail to the accused/petitioner.

6. Considering the submissions of learned counsel for both sides and upon perusal of the case record and the case diary, it is seen that the charge-sheet was filed by the IO after finding sufficient incriminating materials available against the accused/petitioner. It is also seen that the alleged contraband was recovered from the conscious possession of the accused/petitioner. More so, this is a case of commercial quantity as the present accused/petitioner, was arrested in connection with this case on the allegation of recovery of commercial quantity of the contrabands from his conscious possession and accordingly, in the present case, rigor of Section 37 NDPS Act will follow.

7. For ready reference, Section 37 NDPS Act is extracted herein below:

“37. Offences to be cognizable and non-bailable.

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973

(b) No person accused of an offence punishable for offences under section 19 or section 24 or section 27A and also for offences involving commercial quantity shall be released on bail or on his own bond unless—

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.”

8. Thus, as per Section 37 (1) (b) of NDPS Act, the bail can only be granted, if there is no reasonable ground for believing that accused is not guilty of such offence and that he is not likely to commit any offence while on bail. But, from the materials available in the case record as well as the evidences of the 4 witnesses, there cannot be any reasons to believe that the accused/petitioner is not guilty of such offence or he is not likely to commit any offence while on bail as per Section 37 (1) (b) of NDPS Act.

9. In view of the discussions made above and also considering the entire facts and circumstances of the case, nature and gravity of the offence and further on perusal of the case record and the case diary, this Court is of the opinion that there is a *prima facie* case against the accused/petitioner and thus, at this stage, I am of the view that it is not a fit case to enlarge the accused/petitioner on bail only considering the period of incarceration and hence, the same stands dismissed.

10. The bail application stands disposed of in terms above.

11. In the meantime, the learned Trial Court is hereby directed to expedite the trial of the present case.

JUDGE

Comparing Assistant