

GAHC010121772024



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

Case No. : Bail Appln./1768/2024

MOHOR ALI @ MAHAR ALI
S/O LATE MOHOMMAD ALI
R/O VILL- DEKDHOWA
P.S. MORNOI
P.O. GOALPARA, ASSAM
PIN-783101

VERSUS

THE STATE OF ASSAM
REP BY THE PP, ASSAM

Advocate for the Petitioner : MR. M H TALUKDAR,

Advocate for the Respondent : PP, ASSAM,

BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI

ORDER

Date : 18.09.2024

Heard Mr. M.H. Talukdar, learned counsel for the petitioner. Also heard Mr. B. Sarma, learned Additional Public Prosecutor for the State.

2. By this application filed under section 483 of the Bharatiya Nagarik

Suraskha Sanhita, 2023, the accused petitioner namely, **Mohor Ali @ Mahar Ali**, has prayed for bail in connection with **Special (NDPS) Case No. 32/2023 (arising out of Goalpara P.S. Case No. 57/2023)** under Section 22(C)/29 of NDPS Act, pending in the court of learned Special Judge, Goalpara.

3. The learned counsel for the accused/petitioner contends that the alleged items were not recovered from the possession of the petitioner. It is further submitted that the petitioner was neither involved in committing any offense nor present at the spot of the alleged incident, as stated in the FIR. It is further submitted that the alleged vehicles were found on the road adjacent to the land belonging to Omesh Ali and Somer Ali. The police arrested the petitioner from his home while he was sleeping.

4. According to learned counsel for the petitioner, out of 9(nine) witnesses, only 3(three) witnesses were examined. P.W. 2 and P.W. 3, who are the seizure witnesses, specifically stated that the petitioner was not present on the spot. The petitioner was arrested purely on suspicion and has no knowledge of the seized articles. It is also submitted that the petitioner has been in custody since 29.07.2023. In view of the acquisition spelt out against the petitioner as well as considering the period of detention, bail may be granted to the petitioner.

5. On the other hand, Mr. Sarma, learned Additional Public Prosecutor has submitted that out of 9(nine) witnesses, 5(five) witnesses have already been examined. There is no delay in proceeding of the case. The seized articles were recovered from the house premises of the petitioner while those articles were unloaded from one vehicle to another along with two other arrested accused persons. Considering the fact as well as the nature of the

offence, bail may not be granted to the petitioner at this stage of trial.

6. I have considered the submissions made by the learned counsel for the parties. I have also perused the scanned copy of trial court record including the evidence of the witnesses recorded so far.

7. It appears that 5000 nos. of Phensedyl cough syrup bottles and 893.5 grams of Codeine Phosphate were seized from the house premises of the petitioner. It also appears that out of nine witnesses, five witnesses have already been examined. Apparently, there is no delay in proceeding of the case. Situated thus, interference by this Court is not permissible at this stage.

8. The NDPS Act is a special Act with an inbuilt mechanism in the form of Section 37 relating to bail. The commercial quantity of contraband were recovered from the house premises of the petitioner.

9. The Hon'ble Supreme Court in the case of ***Chandrakeshwar Prasad Vs. State of Bihar***, reported in ***(2016) 9 SCC 443***, has laid down in clear terms that interest of the society is a relevant factor to be taken into account while considering the prayer for bail. For ready reference, the relevant paragraphs of the said case are extracted herein below:

"10. This Court in Rajesh Ranjan Yadav @ Pappu Yadav v. CBI through its Director (2007) 1 SCC 70 balanced the fundamental right to individual liberty with the interest of the society in the following terms in paragraph 16 thereof:

"We are of the opinion that while it is true that Article 21 is of great importance because it enshrines the fundamental right to individual liberty, but at the same time a balance has to be struck between the right to individual liberty and the

interest of society. No right can be absolute, and reasonable restrictions can be placed on them. While it is true that one of the considerations in deciding whether to grant bail to an accused or not is whether he has been in jail for a long time, the court has also to take into consideration other facts and circumstances, such as the interest of the society."

10. On consideration of the matter in its entirety, this Court is not inclined to grant bail to the accused/petitioner, at this stage. Therefore, prayer for bail is rejected. However, trial court is directed to expedite the trial of the case.

11. In view of above, the bail application stands disposed of.

JUDGE

Comparing Assistant