

GAHC010130722024



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

Case No. : Bail Appln./1932/2024

JHON PATIR
S/O DEBANANDA PATIR
R/O SILAPATHAR SOCIETY
P.S.-SILAPATHAR
DIST- DHEMAJI
ASSAM

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR
ASSAM

Advocate for : MR. B PHUKAN
Advocate for : PP
ASSAM appearing for THE STATE OF ASSAM

BEFORE

HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

ORDER

13/12/2024

Hard Mr. B. Phukan, learned counsel for petitioner and Mr. B. Sarma learned Additional Public prosecutor, Assam for the State.

2. The petitioner, namely, **Jhon Patir**, son of Debananda Patir, resident of Silapothar, Police Station-Silapothar, District-Dhemaji has filed this application under Section 439 Cr.P.C., praying for his bail in Basistha Police Station Case No. 539/2023 under Sections 21(C)/29 of NDPS Act, corresponding to G.R. Case No. 6740/2023, in which he was arrested on 10.09.2023 and is in custody since then.

3. As per the FIR dated 09.09.2023 lodged before the Officer-in-Charge of Basistha Police Station by the complainant, the case is that on receipt of specific information police personnel from Basistha Police Station with due authorization, required tools, digital weighing machine etc., searched the residence of the petitioner following the due procedure wherein he was found with three other persons with their bags. During their body search, search of their bags and the entire house of the petitioner in presence of the witnesses (i) Numbers of plastic soap boxes containing suspected heroin from the bags; (ii) Two numbers of hand bags with money purses total containing cash of Rs. 1,16,030/-; (iii) Six numbers of mobile handsets and (iv) One Baleno white colour vehicle bearing registration No. AS-01-FK-1067 were recovered. During such search, 251.8 grams of suspected heroin (without the soap boxes) were recovered from the possession of those persons including the petitioner. Consequently, those were seized and the petitioner with his other 3 companions were apprehended and brought to the Basistha Police Station. Accordingly, said FIR was registered as Basistha P.S. Case No. 539/2023. All the apprehended accused persons were produced before the learned Chief Judicial Magistrate, Kamrup (M), Guwahati on 10.09.2023.

4. Contention of the petitioner is that some of the co-accused have already been released on bail by the District Court and that considering their detentions in custody since 10.09.2023, he should be considered for bail. Petitioner also stated that he shall comply with all the terms and

conditions that may be imposed upon him by the Court while considering his bail in the case.

5. It is also contended by the petitioner that since charge-sheet in the case has already been filed, he is no longer wanted for custodial detention of the case and further submitted that he shall appear in the case and shall cooperate in the case. Petitioner stated that he is drug addict and he came to Guwahati with his colleague Bhaskar Jyoti Bori to the house of Prem Gogoi, another arrested co-accused of the case on the day of occurrence wherefrom he was apprehended by police on being recovery of suspected heroin from the house of said Prem Gogoi.

6. By order dated 28.06.2024, the Court called for the records of the case.

7. From the records of the case, it is seen that the FSL report dated 29.11.2023 confirmed the items seized from the possession of the petitioner and his other associates as Heroin, a scheduled NDPS item.

8. After completion of the investigation of the case police on 29.12.2023 submitted the charge sheet in said Basistha P.S. Case No. 539/2023 under Sections 21(C)/29 of NDPS Act against the petitioner and four of his associates involved in the case, one of whom was arrested subsequently. The learned Special Judge (NDPS), Kamrup (Metro), Guwahati on 17.02.2024 directed to register the said Basistha P.S. Case as NDPS case. Accordingly, said Basistha Police Station Case No. 539/2023 has been re-registered as NDPS Case No. 58/2024.

9. From the records of the case, it is seen that the Additional Sessions Judge No.1, Kamrup (Metro) Guwahati in Bail Application No. 561/2023 granted bail to two of the arrested accused in said Basistha P.S. Case No. 539/2023, namely, Bhaskar Jyoti Bori and Monuj Kumbang on the ground of non-production of case diary and on the ground of default bail without verification of record of the case as charge-sheet in the case was already filed on 29.12.2023 and that the Special Judge (NDPS), Kamrup (Metro), Guwahati on 17.02.2024 already considered the said charge-sheet on 17.02.2024.

10. Matter relates to recovery of 251.8 grams of heroin, more than commercial quantity, from the conscious possession of the petitioner and other accused persons of the case. Further, from the case record, it is also seen that the other two accused persons of the case, wrongly released on default bail, are not appearing before the Special Judge (NDPS) in said NDPS Case No. 58/2024 and are taking time in the case on the dates fixed on various pretexts.

11. Considering such materials in the case records and involvement of the petitioner in the alleged crime, this Court is of the opinion that the petitioner is not entitled for his bail in said NDPS Case No. 58/2024 considering his detention since 10.09.2023.

12. For the reasons above, this pre-arrest bail application of the petitioner, namely, **Jhon Patir**, son of Debananda Patir, in said NDPS Case No. 58/2024 arising out of Basistha P.S. Case No. 539/2023 stands **rejected**.

JUDGE

Comparing Assistant