

GAHC010125572024



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

Case No. : Bail Appln./1933/2024

KHAYRUZZAMAN SK. @ KHAIRUZZAMAN SK. @ FIRDUS
S/O LATE AJGOR ALI
R/O MADHU SOULMARI PART-II
P.S. GAURIPUR
DIST. DHUBRI
ASSAM
PIN- 783331

VERSUS

THE STATE OF ASSAM
REP BY THE PP
ASSAM

Advocate for : MR. A M BORA
Advocate for : PP
ASSAM appearing for THE STATE OF ASSAM

**BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA**

ORDER

Date : 23.07.2024

Heard Mr. A. M. Bora, learned Senior Counsel assisted by Mr. V. A. Choudhury, learned counsel for the petitioner. Also heard Mr. P. Borthakur, learned Additional Public Prosecutor for the State respondent.

2. This is an application under Section 439 of the Code of Criminal Procedure, 1973 for grant of bail to the accused/ petitioner, who has been arrested in connection with Gauripur P.S. Case No. 111/2024, under Sections 21(b)/29/22(c) of NDPS Act, corresponding to GR No. 386/2024.

3. Case Diary has been received. Perused the same. Heard both sides.

4. It is submitted by Mr. Bora, learned Senior Counsel for the petitioner, that the present accused/petitioner is innocent and he is no way connected with the alleged offence. He was arrested in connection with this case on 22.04.2024 and since 23.04.2024, he has been in judicial custody. Mr. Bora further submitted that from the forwarding report and from the rejection order of the learned Court below also, it reveals that the present accused/ petitioner was arrested only on the basis of the statement made by the co-accused, which is not admissible as per the view expressed by the Apex Court in the case of **Tofan Singh Vs. State of Tamil Nadu [(2021) 2 SCC 1]**. More so, he submitted that there is no material against the present accused/ petitioner showing his

involvement in the alleged offence and hence, in such a situation, the present accused/petitioner is entitled for bail. He is already behind the bar for more than 90 days and he got arrested only on the basis of the statement made by the co-accused. Moreover, nothing has been seized from the possession of the accused/petitioner and he was picked up by the police from the Court premises only. He had some dispute with the Office-In-Charge of the concerned police station and with some *mala fide* intention, he has been implicated in the present case and accordingly, Mr. Bora, learned Senior Counsel for the petitioner, has submitted that the present accused/ petitioner may be allowed to go on bail. However, he will co-operate with the I.O. in the further investigation of this case.

5. In this context, Mr. Borthakur, learned Additional Public Prosecutor, has submitted that there are sufficient incriminating materials against the present accused/petitioner in the Case Diary and from the available materials as well as the statements of the witnesses, it is seen that he is the main supplier of those contrabands, i.e. codeine phosphate cough syrup as well as the heroine. He is doing the business of supplying those contrabands since long and hence, his further custodial detention will be necessary for the interest of further investigation.

6. Per contra, Mr. Bora, learned Senior Counsel for the petitioner, raised objection and submitted that on what basis it is alleged that the present accused/petitioner is the main kingpin of this case or the main supplier of the alleged contraband when nothing has been seized from the possession of the accused/petitioner. He further submitted that the rights of the present petitioner

cannot be curtailed only on presumption that tomorrow or in near future some material may be collected by the I.O. during investigation. Mr. Bora further submitted that it is clearly distinguished in the judgment of the Apex Court that the statement of the co-accused may be considered while dealing with a petition under Section 438 Cr.P.C. but not in a case under Section 439 Cr.P.C. In that regard, he relied on a decision of Apex Court passed in the case of **The State of Haryana Vs. Samarth Kumar [2022 LiveLaw (SC) 622]**.

7. On the other hand, Mr. Borthakur, learned Additional Public Prosecutor, further submitted that the case is still under investigation and there are probability of collecting materials against the present accused/petitioner, though the I.O. has already collected sufficient materials and some of the independent witnesses also incriminate the present accused/ petitioner in the present case. He further submitted that in a case of a commercial quantity, the statutory period is of 180 days so as to enable the I.O. to collect evidence within the statutory period. Accordingly, Mr. Borthakur raised vehement objection and submitted that it is not at all a fit case wherein the accused/petitioner can be granted with the privilege of bail at this stage.

8. After hearing the submissions made by the learned counsels for both sides, I have perused the Case Diary and it is an admitted fact that the accused/petitioner was arrested from the Court premises and nothing has been seized from the possession of the accused/petitioner. But, from the statements made by the co-accused persons as well as the other witnesses, it is seen that the present accused/petitioner is stated to be the supplier of the drugs from whom the other co-accused persons used to purchase and deals with the

business of drugs. However, it is a fact that till date, the I.O. has not collected any other materials against the present accused/petitioner, but in the same time, it also cannot be denied that the investigation is still under progress and hence, I do not find it appropriate to allow the accused/petitioner to go on bail at this stage as some of the other culprits are yet to be booked in connection with this case and further investigation may unearth some more facts involved in this case.

9. In view of above and also considering all aspects of the case, I find it not a fit case to extend the privilege of bail to the accused/petitioner at this stage and accordingly, the same stands rejected.

10. In terms of above, this bail application stands disposed of.

JUDGE

Comparing Assistant