

GAHC010131492024



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

Case No. : Bail Appln./1906/2024

MD. HUSSAIN AHMED
S/O FAKARUDDIN TAPADAR
R/O VILL- ALAM KHANI
P.O.NEELAM BAZAR
DIST. KARIMGANJ, ASSAM

VERSUS

THE STATE OF ASSAM
REP BY THE PP, ASSAM

Advocate for the Petitioner : MR. B CHOWDHURY, MR D L NATH

Advocate for the Respondent : PP, ASSAM,

BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI

ORDER

Date : 29.08.2024

Heard Mr. B. Chowdhury, learned counsel for the accused-petitioner as well as Mr. R.J. Baruah, learned Additional Public Prosecutor for the State.

2. By this petition filed under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023, the petitioner, namely, **Md. Hussain Ahmed** has prayed for granting bail in connection with **North Lakhimpur P.S. Case No. 152/2024(corresponding to G.R. No. 400/2024)** registered under Section **21(c)/29 of NDPS Act**.

3. It is submitted that the petitioner has been languishing in judicial custody for last 69 days since his arrest on 08.06.2024. It is also submitted that the suspected heroin was not recovered from the possession of the accused/petitioner. It is further submitted that the petitioner is no way involved in the alleged offence. It is also submitted that in the forwarding report, it is mentioned that the petitioner has been projected as drug paddler but no antecedent case is made out against the petitioner. Considering the length of detention and background of the case, bail may be granted to the petitioner.

In support of his submission, the learned counsel for the petitioner has placed reliance on the following case laws-

(i) Ajay Kumar Gupta v. Union of India (2024) 0 Supreme(SC) 682.

(ii) Amarsingh Ramjibhat Barot v. State of Gujarat (2005) 0 Supreme(SC) 1208.

4. On the other hand, Mr. Baruah, learned Additional Public Prosecutor for the State produced the case diary and submits that commercial quantity of heroine was delivered by the petitioner and which was recovered by the police personnel. At this stage he has objected in granting bail to the petitioner as because investigation is still going on.

5. I have considered the submissions of learned counsel for the parties. I have also perused the case diary.

6. It appears that 291.69 gram of heroine was recovered in connection with this case. The FIR named accused persons already supplied the consignment to other persons. During the investigation, it was revealed that 20 packets of suspected heroin were delivered to one Rajib Pegu, while 25 packets of suspected heroin were delivered to Tagar Patir. The petitioner, along with the co-accused, were traveling in a vehicle bearing Regd. No. AS-07-BM-6450 for the purpose of transporting the aforementioned contraband to deliver to other individuals.

7. The NDPS Act is a special Act with an inbuilt mechanism in the form of Section 37 relating to bail. The commercial quantity of heroine was recovered in connection with this case. Investigation is still going on. Charge-sheet has not yet been submitted.

8. 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."

9. On consideration of the matter in its entirety, this Court is not inclined to grant of bail to the accused/petitioner, at this stage. Therefore, prayer for bail is **rejected**.

10. The bail application stands disposed of.

11. Send back the case diary.

JUDGE

Comparing Assistant