

GAHC010145822023



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

Case No. : Bail Appln./2322/2023

SADEK ALI
S/O- LT HANIF ALI, R/O- NO 1 TUPAMARI, P.S. NAGARBERA, DIST.-
KAMRUP, ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY P.P., ASSAM

Advocate for the Petitioner : MR. A PARAMANIK

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN
ORDER

25.01.2024.

Heard Mr. A. Paramanik, learned counsel for the accused. Also heard Ms. A. Begum, learned Addl. P. P. for the State respondent.

2. This application, under Section 439 of the Code of Criminal Procedure, 1973, is preferred by accused **Sadek Ali**, who has been languishing in jail hazoot since 17.07.2022, in connection with the **Special Sessions [NDPS] Case No. 60/2022**, arising out of Nagarbera P.S. Case No. 66/2022, under Sections 22(C)/29 of the NDPS Act, pending before the learned Special

Judge, Kamrup, Amingaon, for grant of bail.

3. It is to be noted here that the aforementioned case has been registered on the basis of an FIR lodged by SI Mirel Ahmed of Nagarbera P.S. on 16.07.2022.

4. The essence of allegations, made in the said FIR is that acting on a tip off on 16.07.2022, at about 03.15 pm the informant along with staff intercepted one Glamour Motor Cycle bearing registration No. AS-25 R 9021 at Nagarbera Bazar near RCC Bridge and on checking the vehicle he found 12 bottles of Codine Phosphet & Chlorphniramine Maleate Syrup and apprehended the Mominul Islam and seized the articles, preparing seizure list.

5. The allegation against the present accused is that during interrogation arrested accused Mominul Islam stated that he brought the same from Sadek Ali. Accordingly, Sadek Ali was apprehended and recovered 197 bottles of Codine Syrup from his possession, while he was trying to fled away.

6. Mr. Paramanik, learned counsel for the accused, submits that the accused was arrested on 16.07.2022, and since then he has been languishing in jail hazoot. Mr. Islam further submits that though charge sheet has been submitted long back and charges has also been framed against the accused by the learned trial court yet, only 6 witnesses have been examined so far, out of 11 witnesses cited in the charge sheet. It is the further submission of Mr. Islam that the witnesses examined so far has not implicated the accused with the charges and that the accused is ready to face trial and will appear before the court on each and every date and therefore, it is contended to allow the petition.

7. On the other hand, Ms. A. Begum, the learned Addl. P.P. submits that all total 197 bottles of Codine Phosphet were recovered from the possession of the accused and that the same were of commercial quantity and that the accused has failed to fulfill the twin requirement of section 37 of the NDPS Act, and that trial is going on and six witnesses have already been examined and some material witnesses are yet to be examined and therefore, it is contended to dismiss the petition.

8. Having heard the submissions of learned Advocates of both sides, I have carefully gone through the petition and the documents placed on record and also perused the scanned copy of the case record, and also the Status Report, received from the learned Court below.

9. The status report reveals that the accused was arrested on 17.07.2022, and since then he has been languishing in jail hazoot. It also appears that the learned court below had framed charge against the present accused under Section 21(C)/29 of the NDPS Act on 18.01.2023 and as many as 6 witnesses have been examined so far by the prosecution side out of 11 witnesses. Given the pace of the trial, being conducted in the learned court below, it cannot be said that there is any considerable delay in the same.

10. It is also not in dispute that the quantities of the contraband substances, so recovered from the possession of the accused persons are of commercial quantity, and as such the accused person has to satisfy the twin conditions of Section 37 of the NDPS Act that there is no reasonable ground to believe that: the accused is not guilty of the offence and that he is not likely to commit any offence while on bail.

11. But, from the materials on record, specially from the scanned copy of the record received from the learned court below and also from the submission of learned counsel for the accused, this Court is unable to derive its satisfaction that there exists any reasonable ground for believing that the accused is not guilty of the offence and that he is not likely to commit any offence, while on bail. Though some prosecution witnesses, examined so far by the learned court below has not supported the prosecution case yet some material witnesses are yet to be examined and at this stage it cannot be said that there is no evidence against the accused.

12. In view of above, and also in view of the nature and gravity of the offence and the punishment prescribed for the same this Court is of the opinion that this is not a fit case to grant the privilege of bail under Section 439 of the Cr.P.C. to the accused and therefore, the same stands **dismissed**.

13. However, the learned Court below is directed to complete the trial as expeditiously as possible, without being influenced by any of the observations made by this court herein above. And if necessary, the learned court below shall take recourse to the provision of Section 309(1) of the Cr.P.C.

14. In terms of above, the bail application stands disposed of.