

GAHC010153662023



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

Case No. : Bail Appln./2479/2023

MD. MAJIBUR RAHMAN @ MUJIBUR RAHMAN
S/O LATE MOIN UDDIN
R/O PIRRO CHOCK
P.S. KARIMGANJ
DIST. KARIMGANJ, ASSAM
PRESENTLY RESIDING AT MIDLAND COLONY, P.S. DIMAPUR EAST
DIST. DIMAPUR, NAGALAND.

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. C K NATH

Advocate for the Respondent : PP, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA**

ORDER

Date : 05.01.2024

- 1)** Heard Mr. Y. S. Mannan, learned counsel for the petitioner. Also heard Mr. D. Das, learned Additional Public Prosecutor for the State respondent.
- 2)** This application under Section 439 of the Code of Criminal Procedure, 1973 has been filed by the petitioner, namely, Md. Majibur Rahman @ Mujibur Rahman, who has been detained behind the bars since 19.11.2022 (for last 411 days) in connection with NDPS Case No. 60/2023, pending before the Court of District and Sessions Judge, Kamrup (M), Guwahati.
- 3)** The gist of accusation in this case is that on 19.11.2022 one Kosheswar Gogoi had lodged an FIR before the Officer-in-Charge of Guwahati, Govt. Railway Police Station, *inter-alia*, that on 19.11.2022 during checking of Rajdhani Express (Train No. 12423) which was stationed at platform No.1 of Guwahati Railway Station, the informant and other police personnel of GRPS found the present petitioner in coach No. B-1 of the said train without any valid railway ticket and on enquiry he told that his ticket is with other two passengers. Thereafter, the other two passengers shown by the present petitioners were also interrogated and on search of their body two packets containing suspected heroin were found concealed in the lower abdomen portion of the other two persons shown by the present petitioner. The name of the said persons are 1. Abud Ahmed and 2. Ubaydur Rahman. The total weight of the contraband seized from the co-accused persons was 1 kg of the suspected heroin together.

- 4)** On receipt of the said FIR, GRPS Case No. 163/2022 was registered and investigation was initiated and after completion of the investigation charge sheet was laid against the present petitioner along with two other co-accused persons under sections 21(c)/29 of the NDPS Act, 1985.
- 5)** Learned counsel for the petitioner has submitted that the bare perusal of the FIR shows that nothing was recovered from the possession of the present petitioner and the recovery of seized heroin was made only from the co-accused persons.
- 6)** It is also submitted by learned counsel for the petitioner that in the charge sheet also nothing specific is mentioned against the present petitioner and there is no material to show how he had conspired along with the co-accused persons in the offence alleged in the FIR.
- 7)** Learned counsel for the petitioner therefore, submits that no offence under Section 21(c)/29 of the NDPS Act, 1985 is made out against the present petitioner and therefore the embargo of Section 37 is not applicable in this case.
- 8)** After perusal of the scanned copy of the NDPS Case No. 60/2023 which was called for in connection with this case, learned Additional Public Prosecutor has submitted that co-accused Abud Ahmed has implicated and Ubaydur Rahman have implicated the present petitioner and have stated that it is the present petitioner who fitted the two bags of heroin on the waist of the co-accused persons from whom the seized contraband was recovered.
- 9)** Learned Additional Public Prosecutor has therefore, strongly opposed the grant of bail to the present petitioner.
- 10)** I have heard the submissions made by both sides as well as perused the scanned copy of the case record of NDPS Case No. 60/2023.
- 11)** On perusal of the record, it appears that nothing was recovered from the

possession of the present petitioner and the recovery was made only from the co-accused persons who concealed the seized contraband in their bodies attached to their abdomen.

12) It also appears that the only material available against the present petitioner is the statement of the co-accused recorded during investigation and apart from that statement there is nothing available against the present petitioner to implicate him under Section 21(c)/29 of the NDPS Act, 1985.

13) The Apex Court in the case of "*Tofan Singh Vs. The State Of Tamil Nadu*" reported in **(2021) 4 SCC 1**, has observed that the statement of the co-accused recorded under Section 67 of the NDPS Act, 1985 is not inadmissible as an evidence against the co-accused.

14) Considering the fact that except the statement of the co-accused there is nothing available on record to implicate the present petitioner under Section 21(c)/29 of the NDPS Act, 1985 and hence, for the limited purpose of the consideration of the instant bail application, this Court is of the view that there is no reasonable ground to believe that the present petitioner is guilty of the offence alleged in this case and further there is also no material to show that he is likely to commit similar offence if he is released on bail.

15) In view of the above, the petitioner, namely, Md. Majibur Rahman @ Mujibur Rahman is allowed to go on bail of Rs. 50,000/- (Rupees Fifty Thousand only) with two sureties of like amount (one of whom should be a government servant and residing within the State of Assam) subject to the satisfaction of the District and Sessions Judge, Kamrup (M), Guwahati with the following conditions:

- i. That the petitioner shall cooperate in the trial of NDPS Case No. 60/2023, which is pending before the District and Sessions Judge,

Kamrup (M), Guwahati;

- ii. That the petitioner shall appear before Trial Court as and when so required by the Trial Court;
- iii. That the petitioner shall not leave the jurisdiction of the Trial Court without prior permission of the Trial Court;
- iv. That the petitioner shall not directly or indirectly make any inducement, threat, or promise to any person who may be acquainted with the facts of the case, so as to dissuade such person from disclosing such facts before the Trial Court in the Trial pending against the present petitioner; and
- v. That the petitioner shall not commit any offence similar to the one for which he has been accused of, while he is on bail.

With the above observation, this bail application is accordingly disposed of.

JUDGE

Comparing Assistant