GAHC010155752024

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

**Case No. : Bail Appln./2310/2024**

MOHIDUL ISLAM
S/O FAIZUDDIN SEIKH, VILL- JHAGRARPAR PART-4, P.S. AND DIST-DHUBRI, ASSAM

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

**Advocate for the Petitioner** : MR. M MONDAL, MR D C NATH,MR M CHOUDHURY,MR. N UDDIN

**Advocate for the Respondent** : PP, ASSAM,

**BEFORE**
**HONOURABLE MR. JUSTICE KAUSHIK GOSWAMI**

**ORDER**

**21.08.2024**

**1.** Heard Mr. N. Uddin, learned counsel for the petitioner. Also heard Mr. K.K. Parasar, learned Additional Public Prosecutor appearing for the State of Assam.

**2.** This is an application under Section 483 of the BNSS, 2023 read with Section 37 of the NDPS Act, for release on bail of the accused person, namely, Mohidul Islam, who was arrested on 02.07.2023 (since last 417 days), in connection with NDPS Case No. 38/2023, arising out of Palashbari P.S. Case No. 233/2023 registered under Section 21(c)/29 of the NDPS Act, 1985.

**3.** The case of the prosecution is that on 01.07.2023, at 11:00 PM, the Additional SP (Headquater), Kamrup provided information that one Datsun Go white coloured vehicle bearing Registration No. AS17J9122 was moving from Guwahati to Dhubri and that narcotics were being transported by the said vehicle. Accordingly, a barricade was set up in front of the thana and the informant, along with the team proceeded there and at around 11:45 PM, while the vehicle was proceeding and trying to escape was stopped and found 3(three) occupants inside the vehicle including the petitioner.

**4.** Upon search, narcotics drugs weighing about 594 grams along with plastic pouches, along with 50 numbers of soap boxes were seized from the vehicle. Accordingly, the petitioner was arrested and a case was registered.

**5.** Mr. N. Uddin, learned counsel for the petitioner submits that the charge-sheet has already been submitted and trial has commenced, wherein, out of 10(ten) prosecution witnesses, 6(six) has already been examined.

**6.** He further submits that from the deposition that has come before the Trial Court, there is no evidence whatsoever as regards the involvement of the petitioner.

**7.** He further submits that reading of the witnesses, i.e. PW. 1, P.W. 2 and 3 amply demonstrates the gross violation made by the Investigating Officer under Section 42, 50, 52 A of the NDPS Act, 1985.

**8.** Mr. K.K. Parasar, learned Additional Public Prosecutor for the State

respondent, on the other hand, opposes the prayer for bail. He submits that the trial has been commenced speedily and out of 10(ten), 6(six) prosecution witnesses has already been examined. He further submits that the examination of the 6(six) witnesses was done within a period of 7(seven) months. He accordingly, submits that the trial is expected to be over within a very short time and accordingly, prays that the bail prayers sought for may not be granted.

**9.** I have given my prudent considerations to the arguments made by the learned counsel for the parties as well as perused the scanned copy of the Trial Court records placed before this Court and the other relevant materials available on record.

**10.** It appears from the cross-examination of PW-1 that there was no Gazette Officer/Magistrate present at the time of the subject search and seizure. It further appears that no notice under Section 50 of the NDPS Act, 1985 was served upon the accused as no body search was done in this case. It further appears that the information regarding the narcotics drugs was not reduced into writing and the same was not forwarded to the superior officials in written form. It further appears from the evidence of the PW-2, who is one of the seizure witness that the police stopped him in front of the Palashbari Police Station and took his signature on a paper by informing him that he may have to go to Court for giving evidence. It further appears from his cross-examination that no article was shown to him at the time of taking his signature as a seizure witness. PW-3, who is the other seizure witness has also deposed similarly before the Trial Court.

**11.** In view of the above, it is apparent that there is violation of Section 52A of the NDPS Act, 1985. Since the offences under the NDPS Act, 1985 prescribes very stringent punishment, hence, the compliance with statutory prescription

and procedures shall also have to be strictly and scrupulously followed.

**12.** It further appears that the trial has substantially progressed and out of 10(ten) prosecution witnesses, 6(six) has already been examined.

**13.** In view of the above, this Court is of the considered view that in view of the non-compliances of the statutory provisions under the NDPS Act, 1985, the rigours of Section 37 of the NDPS Act, 1985 would not apply to such a case.

**14.** The applicant is detained behind the bars for last 417 days and for reasons mentioned herein above, he is entitled to get bail in this case.

**15.** In view of the reasons discussed hereinabove, the petitioner, Mohidul Islam, is allowed to be released on bail of Rs. 50,000/- with two sureties of like amount, subject to the satisfaction of the learned Special Judge, Kamrup (Amingaon) with following conditions: -

(i) After getting released on bail, the petitioner shall appear before the Investigating Officer of Palashbari P.S. Case No. 233/2023, once in every week for next four weeks or till the investigation is completed, whichever is earlier, and shall cooperate in the investigation.

(ii) The petitioner shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade such person from disclosing such facts to the Court or to any Police Officer.

(iii) The petitioner shall provide his contact details, including the photocopies of his Aadhaar card or driving license or PAN card and mobile number and

any other contact details to the Investigating Officer of the Case.

**16.** With the above observations, this bail application is hereby disposed of.

**17.** It is needless to clarify that the observations made herein are for the purpose of considering the bail prayer and shall not be binding in any other proceedings.

**JUDGE**

**Comparing Assistant**