

GAHC010166162024



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

**Case No. : Bail Appln./2475/2024**

FARUK AHMED  
S/O ASAD UDDIN, R/O VILL- SOUTH KEUTI, P.S.-PATHARKANDI, DIST-  
KARIMGANJ, ASSAM

VERSUS

THE STATE OF ASSAM  
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

**Advocate for the Petitioner** : MR. A AHMED, MR A AHMED,U U KHAN,MR. M A  
CHOUDHURY

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

**BEFORE**  
**HONOURABLE MR. JUSTICE ROBIN PHUKAN**

**ORDER**

**Date :23.09.2024.**

Heard Mr. A. Ahmed, learned counsel for the accused. Also heard Mr. B. Sharma, learned Addl. P.P. for the State respondent.

**2.** This application, under Section 483 of the **Bharatiya Naya Suraksha Sanhita** (BNSS), 2023 is preferred by accused **Faruk Ahmed**, who has been

linguishing in jail hazoot since 02.02.2023, in connection with the **Special (NDPS) Case No.108/2022**, arising out of Patharkandi P.S. Case No. 177/2022, under Sections 22(c)/25/29 of the NDPS Act, pending before the learned Special Judge, Karimganj, for grant of bail.

**3.** Be it mentioned here that the aforementioned case has been registered on the basis of an FIR lodged by S.I. M. Narendra Singh of Patharkandi P.S. on 02.02.2023.

**4.** The essence of allegations, in the said FIR dated 02.02.2023, is that acting on a tip off on 18.07.2022, at about 2 am, the informant along with staff, conducted search in the cow shed of the house premises of one Ashab Uddin of South Keoti and recovered 30,000 suspected Yaba Tablets, weighing 3.270 kg and seized the same preparing seizure list in presence of witnesses. And during interrogation accused Asab Uddin reveals that his son Faruk Ahmed, (the present accused) has started peddling of drugs and he might have kept the tablets concealed and he is at Mizoram.

**5.** Mr. Ahmed, learned counsel for the accused, submits that this is the second bail application and the first one, being 3467/2023 was dismissed by this court on 23.01.2024. Mr. Ahmed submits that while dismissing the first application, this court was pleased to direct the learned trial court to take recourse to Section 309(1) Cr.P.C. but despite there is no progress in the trial. Mr. Ahmed also submits that the accused was arrested on 02.02.2023, and since then he has been languishing in jail hazoot for almost one year seven months, and considering the period of detention and lack of progress in trial Hon'ble Supreme Court in the case of **Alamgir Sardar vs. State of West Bengal, in Criminal Appeal No. 2496/2024**, had granted bail to the accused. Mr.

Ahmed further submits that nothing has been recovered from the possession of the accused of said case. Referring to a decision of Hon'ble Supreme Court in (i) **Bharat Chaudhary vs. Union of India, reported in AIR 2022 SC (Supp) 370** (ii) **Mokbul Hussain vs. State of Assam, in Criminal Appeal No. 116/2023**, (iii) **Naeem Ahmed alias Naim Ahmad vs. Govt. of NCT of Delhi, in Criminal Appeal No. 1247 of 2024**, Mr. Ahmed submits that the accused in similar circumstance Hon'ble Court had granted bail to the accused. Mr. Ahmed also submits 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. Mr. Ahmed also referred following decisions of Hon'ble Supreme Court to bolster his submission:-

(i) **Anjan Nath vs. State of Assam, in Special Leave to Appeal (Cr1.) No. 9860/2023**,

**6.** On the other hand, Mr. K.K. Parasar, the learned Addl. P.P. submits that commercial quantity of contraband substances i.e. 30,000 suspected Yaba Tablets, weighing 3.270 kg were recovered from the house premises of the accused and that the accused has to satisfy the twin requirement of section 37 of the NDPS Act and the accused has failed to establish the same. Mr. Parasar further submits that the issue of possession has already been dealt with by this court, vide order dated 23.01.2024 and the accused cannot raise the same again. Mr. Parasar further submits that the case is pending at the stage of evidence and fair opportunity is required to be given to the prosecution side to produce the witnesses. Therefore, it is contended to dismiss the petition.

**7.** To a pointed query of this court as to how the requirements of section 37 of the NDPS Act is to be satisfied with Mr. Ahmed referring to a decision of Hon'ble

Supreme Court in **Shince Babu vs. State of Kerela and Anr., in Special Leave to Appeal (Cr1.) No(s) 16642/2023**, submits that as nothing has been recovered from the possession of the accused it is difficult to apply the twin test of Section 37 of the NDPS Act. Referring to another decision of Hon'ble Supreme Court in **Hasanujjaman and Ors. vs. State of West Bengal, in Special Leave to Appeal (Cr1.) No. 3221/2023**, Mr. Ahmed submits that regardless of direction of this court, trial could not be completed and that the accused has no criminal antecedent, there is substantial compliance of Section 37 of the NDPS Act.

**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 received from the learned trial court reveals that the case is pending for evidence and the charge was framed against him on 05.02.2024. Thereafter, the case was fixed for evidence on 18.04.2024, 13.05.2024, 06.06.2024, 24.07.2024, but on the said dates the prosecution witnesses did not turn up. It also appears that accused was arrested on 02.02.2023, and since then he has been languishing in jail hazoot.

**10.** It also appears that though the issue of possession is again raised here in this petition, yet it appears that the issue had already been dealt with in the earlier bail order dated 23.01.2024.

**11.** Indisputably, 30,000 suspected Yaba Tablets, weighing 3.270 kg, were recovered from the house premises of the accused. The factum of aforesaid

items being the commercial quantity is also not in dispute. Therefore, the accused has to satisfy the requirement of Section 37(1) (b) (ii) of NDPS Act. This aspect has been dealt with by a three Judges Bench Hon'ble Supreme Court in **NCB vs. Mohit Agarwal** [Criminal Appeal Nos. 1001-1002 of 2022, arising out of petitions for Special Leave to Appeal (Cr1.) No. 6128-29 of 2021, decided on 19 July, 2022] and also in the case of **Union of India vs. Ajay Kumar Singh @ Pappu**, in Criminal Appeal No.952 of 2023 [Arising out of SLP (CRL.) No. 2351 OF 2023], decided on 28 March, 2023. In the said case, Hon'ble Supreme Court, while setting aside the order of granting bail by the Allahabad High Court, to the accused involving in commercial quantity of contraband substance, has held as under:-

“In view of the above provisions, it is implicit that no person accused of an offence involving trade in commercial quantity of narcotics is liable to be released on bail unless the court is satisfied that there are reasonable grounds for believing that he is not guilty of such an offence and that he is not likely to commit any offence while on bail.”

**12.** In the instant case 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.

**13.** I have considered the submission of Mr. Ahmed, the learned counsel for the accused and also gone through the decision of Hon'ble Supreme Court in

**Shince Babu (supra)** wherein it has been held that - as nothing has been recovered from the possession of the accused it is difficult to apply the twin test of Section 37 of the NDPS Act. But, in **Union of India through NCB, Lucknow vs. Nawaz Khan** reported in (2021) 10 SCC 10, it has already been held that - even for the sake of argument it is accepted that the contraband substances were not recovered from the conscious possession of the present accused, yet the same does not absolve it of level of scrutiny required under Section 37(1) (b) (ii) of NDPS Act. In the case of **Shince Babu (supra)** the decision in **Nawaz Khan (supra)** is not referred to and also not discussed. I have also gone through the decision referred by Mr. Ahmed in **Hasanujjaman (supra)** wherein it has been held that regardless of direction of High Court, trial could not be completed and that the accused has no criminal antecedent, there is substantial compliance of Section 37 of the NDPS Act. But, herein, it is not the case of the accused that he had no criminal antecedent. No argument is advanced on this point.

**14.** I have also gone through the other decisions referred by Mr. Ahmed. And I find that said case would not advance the case of the present accused in as much as the factors weighed the Court in granting bail were of different. In the case of **Anjan Nath(supra)** and **Mokbul Hussain (supra)** bail was granted on consideration of parity. In the case of **Naeem Ahmed alias Naim Ahmad (supra)** possession of contraband substance by the accused was debatable. In the case of **Alamgir Sardar (supra)** consideration was delay in trial. In the case of **Bharat Chaudhury (supra)** bail was granted as nothing was recovered from the conscious possession of the accused.

**15.** 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 483 of the BNSS to the accused and therefore, the same stands dismissed.

**16.** In terms of above, the bail application stands disposed of.

**JUDGE**

**Comparing Assistant**