

GAHC010167592024



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

Case No. : Bail Appln./2484/2024

MD WAHIDUZZAMAN @ SUMAN AHMED
S/O YEAHAYEA, R/O VILL- TATIRBOND, 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

Advocate for the Respondent : PP, ASSAM,

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

30.09.2024

- 1.** Heard Mr. A. Ahmed, learned counsel for the petitioner. Also heard Mr. K.K. Das, learned Additional Public Prosecutor appearing for the State of Assam.
- 2.** This application under Section 483 of the BNSS, 2023 has been filed by the petitioner, namely, Md. Wahiduzzaman @ Suman Ahmed, who has

been detained behind the bars since 16.01.2024 in connection with Special Case (NDPS) No. 09/2024, under Section 22(c)/29 of NDPS Act, 1985, pending in the Court of learned District and Sessions Judge, Karimganj, Assam.

3. The gist of accusation in this case is that on 15.01.2024, one Bishal Chetry, Sub-Inspector of Police had lodged an FIR before the Officer-In-Charge of Patharkandi Police Station, inter alia, alleging that 7220 numbers of YABA Tablets containing methamphetamine was seized from the possession of the two accused persons, namely, Md. Wahiduzzaman @ Suman (present petitioner) and Kamrul Islam.

4. On receipt of the said FIR, investigation was initiated and after completion of investigation, charge-sheet was laid against two accused persons (including the present petitioner) under Section 22(c)/29 of NDPS Act, 1985.

5. The learned counsel for the petitioner has submitted that in the FIR lodged in this case, the first informant had mentioned that one of the two accused persons, who were apprehended in this case was holding black colour polythene, however, the said person has not been named in the FIR, as to who was holding the black colour polythene containing the YABA Tablets. He has submitted that there is also nothing in the record to show that there was abetment or any conspiracy by the other accused persons.

6. The learned counsel for the petitioner has referred to Rule 4 of the Narcotic Drugs and Psychotropic Substances (Seizure, Storage. Sampling and Disposal) Rules, 2022, whereby, the person from whose possession

drugs and substances were recovered shall have to be invariably mentioned in the panchanama drawn at the spot of the seizure. He submits that as same was not done, the petitioner is entitled to get benefit and he is also entitled to get bail on that ground.

7. On the other hand, learned Additional Public Prosecutor has the preferred to the seizure list and has submitted that the name of the present petitioner has been categorically mentioned in the seizure list as the person, who was holding the black colour polythene from where the contraband was seized.

8. I have considered the submissions made by learned counsel for both the sides and have gone through the materials on record.

9. As on perusal of seizure list (MR No. 4/2024), it appears that the Seizing Officer has categorically mentioned the name of present petitioner, as the person who was holding the black colour polythene from where the seized contraband was recovered. As in the instant case, the quantity of contraband seized is of commercial quantity. Hence, the embargo of Section 37 of the NDPS Act, 1985 is applicable and as there are incriminating material, on record against the present petitioner, this Court is of considered opinion that embargo of Section 37 of the NDPS Act, 1985 is applicable in this case and the petitioner is not entitled to get bail due to the said embargo at this stage.

10. Hence, the prayer for bail of the above-named petitioner is rejected.

JUDGE