

GAHC010287252023



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

Case No. : Bail Appln./4601/2023

YAHIIYA KHAN
S/O RASHID ALI
NEAR 2 NO. MASJID /OLD LP SCHOOL
WARD NO. 1, KUAKATA, MOIRANG,
BISHNUPUR, MANIPUR.

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. P K ROYCHOUDHURY
Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN

ORDER

Date : 08-01-2024

Heard Mr. P. K. Roychoudhury, learned counsel for the accused and also heard Mr. R. J. Barua, learned Addl. P.P. for the State respondent.

This application, under Section 439 Cr.P.C. is preferred by accused, Yahiya Khan, who has been languishing in jail hajat in connection with NDPS Case No. 197/2023, under Sections 21(C)/27-A of the NDPS Act, pending before the

learned Addl. Sessions Judge, No.2, Kamrup (M) arising out of Noonmati P.S.Case No. 205/2023 since 10.07.2023, for grant of bailS. The above noted case has been registered on the basis of an FIR lodged by Abdul Momin, S.I. of Noonmati Police Out Post on 09.07.2023.

The essence of allegation, made in the FIR, dated 09.07.2023, is that acting on a tip off, he alongwith police staffs apprehended one person at Bishnu Store, Kamala Bagan at about 1-30 PM, namely Yahiya Khan and after checking him, plastic shop boxes weighing 354.48 grams including the weight of the plastic shop box, with transparent plastic pouch 110.50 grams of suspected heroin recovered from his possession.

Mr. Roychoudhury, learned counsel for the accused submits that the accused was arrested 10.7.2023 and since then he has been languishing in jail hajot. Further, Mr. Roy Choudhury submits that the quantity of contraband substance recovered allegedly from the accused is of 110.53 grams which is intermediate quantity and therefore the learned Court below has framed charge against the accused u/s 21 B of the NDPS Act vide order dated 5.1.2024. Further Mr. Choudhury submits that the accused is entitled to default bail as the investigating officer ought to have submitted charge sheet before 90 days which is I.O. has failed to do so and as such the accused is entitled to default bail and therefore, it is contended to allow the petition. Mr. Choudhury, learned counsel for the accused submits that the accused will appear before the learned Court below regularly.

On the other hand, Mr. R. J. Barua, learned Addl. P.P. submits that the accused is not entitled to default bail since the case was registered u/s 21(C) of the NDPS Act, read with Section 27-A of the said Act and that the accused hails from Manipur and there is likelihood of jumping bail and therefore, Mr. Baruah

has opposed the petition

Having heard the submission of learned Advocates of both the parties, I have carefully gone through the petition and the documents placed on record and also perused the LCR received from the learned Court below.

It appears that though the case has been registered u/s 21 (C) / 27-A of the NDPS Act and the charge sheet was also submitted under the said Section, yet the learned Court below has framed charge against the accused u/s 21(b) only, as because of the quantity of contraband substances allegedly recovered from his possession, is only 110.53 grams, which is of intermediate quantity.

It also appears that investigation has already been completed and charge sheet has been submitted and charge has already been framed by the learned Court below. The accused is behind the bar since 10.7.2023 and the charge sheet was submitted on 28.11.2023.

Under the aforesaid facts and circumstances, this Court is of the view that further custodial detention seems to be not warranted here in this case. And therefore this Court is inclined to allow this petition. It is provided that on furnishing a bond of Rs.50,000/-, with two surety of like amount and out of the two surety, one surety shall be a public servant, to the satisfaction of the learned Addl. Sessions Judge, No.2, Kamrup (M) Guwahati, the accused be enlarged on bail.

JUDGE

Comparing Assistant