GAHC010169712020

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

Case No. : Bail Appln./2133/2020

ABDUS SALAM
S/O CHAN MAHMUD @ CHAN MAMUD
R/O VILL-DHAKALIAPARA
P.S.-HOWLY
DIST-BARPETA
ASSAM

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR
ASSAM

Advocate for : MR H R A CHOUDHURY
Advocate for : PP
ASSAM appearing for THE STATE OF ASSAM

BEFORE
HON'BLE MRS. JUSTICE RUMI KUMARI PHUKAN

O R D E R

11-12-2020.

By filing this petition under Section 439 of the CrPC, petitioner Abdus Salam who is in custody since

08.09.2020, has prayed for releasing him on regular bail in connection with the Howly P.S. Case No.374/2020, under Section 20(B) of the NDPS Act.

Heard Mr. HRA Choudhury, learned senior counsel being assisted by Mr. A. Ahmed, appearing for the petitioner Abdus Salam as well as Mr. N.K. Kalita, learned Addl. P.P., Assam representing the State respondent.

The case diary has been produced.

It is submitted by the learned counsel for the parties that Section 20(C) of the NDPS Act has already been added in the present case, which pertains to commercial quantity.

The learned senior counsel for the petitioner led the Court through the FIR as well as the seizure list, prepared in connection with the case, which clearly reveals that the articles seized contained: (1) Nine (9) cartoons Ensedyl (containing 100 bottles in each cartoon) and (2) Twenty (20) cartoons COD-X (containing 100 bottles in each cartoon) from one Manoranjan Das and he was apprehended. The FIR also reflects that as led by Manoranjan Das, the present accused/petitioner was also apprehended. It indicates that the present petition was not present along with Manoranjan Das. On the other hand it is contended that the present petitioner has a valid license to deal with such drugs vide Annexure-4 of the petition, which is valid upto 03.11.2020 and the seizure was made on 07.09.2020.

Accordingly it has been submitted that the petitioner being a duly license holder, he is protected under Section 8 of the NDPS Act, even though it is assumed that the seized drugs were carried to the premises, which was for medical purpose. In this regard the decision rendered in the case reported in (2007) (1) SCC 355 (State of Uttaranchal vs. Rajesh Kumar Gupta) has been pressed into wherein it has been held that when medicines seized comes within the purview of Schedules G and H of the Drugs and Cosmetics Act and none of them finds place in the Schedule I appended to the 1985 Rules, the provisions of Section 8 of the 1985 Act will be applicable and resultantly Section 37 of the NDPS Act will not come into play.

Two decisions of our High Court have also been referred, which were rendered in (1) Bail Application No.761/2020, dated 07.04.2020 and (2) Bail Application No.1636/2020, dated 05.10.2020, wherein the accused persons were granted bail, being the license holders. Further it has been held that certain incriminating materials required to be brought on record to suggest the complicity of the accused person of running such drugs business.

I have gone through the documents so annexed and the concerned schedule that has been referred to.

After going through the case diary, it is found that there are certain discrepancies which raise doubt about the complicity of the present petitioner with other accused Manoranjan Das. As per the FIR, the articles were seized from said Manoranjan Das and on led by him, the present accused petitioner was apprehended. That being so, the seized articles were carried by said Manoranjan Das and the arrest of the present accused/petitioner was made subsequently. The seizure list also shows that the articles were seized from one person Manoranjan Das which indicates the absence of the present accused petitioner at the time of occurrence. No any further witnesses have been examined to satisfy that there are reasonable grounds to hold that present petitioner is guilty of the offence.

In the circumstances, this Court is of the opinion that the present petitioner will get the benefit of the circumstances as has been referred above, whereas he has a valid license to run the drugs business.

Considering all entirety, the accused person named above is allowed to go on regular bail of Rs.25,000/- with one surety of like amount, to the satisfaction of learned Special Judge at Barpeta, in connection with the Howly P.S. Case No.374/2020.

The bail petition stands disposed of accordingly.

Return back the case diary forthwith.

JUDGE

Comparing Assistant