GAHC010306422019

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

Case No. : Bail Appln. 3981/2019

1:SAHABUDDIN MOLLAH
S/O- AMZAD ALI MOLLAH, VILL- AIRONJANGLA PT-III, P.S. DHUBRI, DIST. DHUBRI, ASSAM, PIN- 783323

VERSUS

1:THE STATE OF ASSAM
REP. BY P.P., ASSAM

Counsel for respondent : Mr. NJ Dutta
Additional Public Prosecutor, Assam

BEFORE
HON'BLE THE CHIEF JUSTICE MR. AJAI LAMBA

26.03.2020

Sahabuddin Mollah has filed this application for bail under Section 439 of the Code of Criminal Procedure in Dhubri PS Case No.1829/2019 registered under Section 22(C) of the NDPS Act, 1985.

2. The Court proceedings have been conducted by means of creating a Virtual Court with the help of technology, so as to maintain distance between the staff, Advocates and the Presiding Judge.

3. Learned counsel for the applicant has not appeared to prosecute the case.

I find that the application came up for hearing for the first time on 12.12.2019.

Thereafter the case was adjourned repeatedly to enable the Public Prosecutor to get the case diary and specific instructions.

4. I have gone through contents of the bail application and the accompanying documents. I have heard learned counsel for the prosecution.

Essentially it has been pleaded on behalf of the applicant that recovery of the contraband was made from the road which is in front of the house of the applicant. The material was being carried by another person who escaped. On suspicion, the applicant was taken in custody. In fact, the applicant is only running a Pan shop. The applicant has three children. Due to detention of the applicant, his family is facing starvation.

5. Learned counsel for the prosecution has opposed the prayer for bail on the ground that 71 bottles of Rc kuff cough syrup were recovered from the house of the applicant. As per FSL Report, each bottle contained 10 mg of Codeine Phosphate and therefore the total recovery would be commercial in nature.

6. On a query of the Court, learned counsel for the prosecution admits that there is no material available at this point in time to indicate that the applicant is a habitual offender.

7. As a question of law it would have to be determined as to whether the entire liquid drawn from all the 71 bottles is required to be considered as the offending substance or only the opioid extracted therefrom is required to be considered as recovered material.

8. I have also taken into account the fact that Rc kuff is a cough syrup which is duly licensed, however allegedly the applicant did not hold a chemist's licence.

9. Considering the totality of facts and circumstances of the case, and also the fact that the applicant has been in custody since October, 2019 and continued custody of the applicant shall not serve any purpose in law or purpose of investigation, the application is allowed.

10. It is hereby directed that the applicant, namely Sahabuddin Mollah be released on bail on his furnishing bail bonds to the satisfaction of the Special Judge, Dhubri.

11. Heavy surety.

12. It is further directed that in case the applicant approaches any witness or delays the trial, the prosecution would be at liberty to seek cancellation of bail of the applicant.

13. Let copy of this order be provided under the signatures of the Court Master.

CHIEF JUSTICE

Comparing Assistant