

GAHC010020422024



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

Case No. : Bail Appln./287/2024

MAFIZUL HAQUE
S/O- MD. MAZNUR ALI,
R/O -FANCYPARA GARIGAON, P.S -JALUKBARI, DIST KAMRUP (M), ASSAM

VERSUS

THE STATE OF ASSAM
REP BY PP . ASSAM

Advocate for the Petitioner : NIMISH MAHAJAN
Advocate for the Respondent : PP, ASSAM

**BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI**

ORDER

26.04.2024

Heard Mr. B. K. Mahajan, learned counsel appearing for the accused petitioner as well as Mr. D. Das, learned Addl. P.P., Assam appearing for the State respondent.

By this petition under Section 439 Cr.P.C., the accused-petitioner, namely, **Md. Mafizul Haque**, has prayed for grant of bail in connection with **NDPS Case No.01/2024** arising out of S.T.F. police station case No. 06/2023 under Sections **21(C)/29(1) of NDPS Act.**

The case of the prosecution is that on 11.7.2023 an FIR has been lodged

before the office in-charge of S.T.F. Police station to the effect that on 10.07.2023 based on secret information regarding trafficking of narcotic drugs at Amingaon and Palashbari area, a search operation was carried out. During search operation, an information was received that the deal was shifted to another location somewhere at Sonapur. Accordingly police team rushed to Sonapur area near toll plaza and intercepted the vehicle bearing No. AS 01 BL 2211. During search of the said vehicle, 144 numbers of packets of suspected heroin were recovered. Accordingly, the said narcotic drugs were seized and the petitioner along with the vehicle was arrested.

Learned counsel for the petitioner has submitted that the accused has been detained in custody more than nine months since his arrest on 11.07.2024. After filing of charge-sheet, though bail applications were filed on subsequent stages of trial but it was rejected by the trial court. According to learned counsel for the petitioner, the petitioner has no knowledge about the alleged contraband. He has been falsely implicated in this case and no contraband was recovered from the conscious possession of the accused petitioner.

It is also submitted that as per the seizure list dated 11.07.2023, there were two independent witnesses to the alleged seizure made from the accused petitioner, namely, Sahil Hussain and Pankaj Singh. Out of which that Sahil Hussain has been examined as PW-2 who in his deposition before the trial court has not supported the prosecution case. As regards the other seizure witness i.e. Pankaj Singh the said witness could not be traced out by the prosecution and has been dropped as a witness which is reflected in the order of the trial court dated 01.04.2024.

It is pointed out by learned counsel for the petitioner that as regards the factum of recovery, there is no independent witness who would support the

prosecution story. Moreover, out of 14 witnesses only 2 witnesses have been examined and it has been consistently held by the Hon'ble Supreme Court that in the case of prolonged incarceration, the embargo under Section 37 of the NDPS Act is overridden as the same militates against the fundamental right guaranteed under Article 21 of the Constitution of India.

It is further submitted that there is gross violation of Section 42 of the NDPS Act during investigation. Accordingly, learned counsel has prayed to release the accused petitioner on bail.

In support of his submission learned counsel has placed reliance on the following case laws:

- (i) *(2017) 15 SCC 684 (Naresh Kumar @ Nitu Vs state of Himachal Pradesh)*
- (ii) *(2004) 12 SCC 266 (Sarija Vanu and another Vs State through Inspector of Police).*
- (iii) *(2018) 2 SCC 305 (Gorakh Nath Prasad vs State of Bihar).*

In response, Mr. D. Das, learned Additional Public Prosecutor has submitted that the accused was found in the vehicle along with the narcotic drugs. However, the independent witness was examined in the court did not support the prosecution case regarding recovery from the present petitioner. It was also admitted by learned Additional Public Prosecutor that out of 14 witnesses only 2 witnesses were examined.

I have considered the submission of the learned counsel for the parties. On perusal of the trial court record, it reveals that though the case was lodged on 11.07.2023 and the accused was arrested on that day, but charge-sheet has been submitted on 22.12.2023 and charge was framed on 22.01.2024 and two witnesses

were examined till today. Under such backdrop, it cannot be said that there was any procedural delay on the part of the prosecution.

It is true that one witness, PW-2 has stated that when he put his signature in ext-3, it was not filled up. He put his signature on the next day morning. And PW-1 is the Scientific Officer who submitted the FSL report. It appears that 12 witnesses are yet to be examined. The trial is going on and as such it cannot be said at this stage that the accused be acquitted due to non compliance of the provision under Section 42 of NDPS Act or PW-2 did not support the prosecution case. As per submission of the learned counsel for the petitioner regarding his innocence is concerned, suffice it to know that the petitioner was found at the place along with the vehicle from where huge quantity of contraband have been recovered.

This Court is also conscious of the judgment passed by the Hon'ble Supreme Court in the case of *State of Madhya Pradesh Vs Kajad* reported in (2001) 7 SCC 673 wherein Hon'ble Apex Court has observed as under:

“ The negation of bail is the rule and is grant is exception under Sub clause (ii) of clause (b) of Section 37 (1). For granting the bail, the Court must, on the basis of the record produced before it be satisfied that there are reasonable grounds for believing that the accused is not guilty of the offence with which he is charged and further that he is not likely to commit any offence while on bail. It has further to be noticed that the conditions for granting the bail, specified in Clause(b) and Sub Section (1) of Section 37 are in addition to the limitations provided under the Code of Criminal Procedure or any other law for the time being in force regulating the grant of bail. Liberal approach in the matter of bail under the NDPS Act is uncalled for.”

Similarly, Hon'ble Supreme Court in the case of ***Union of India Vs Md. Nawaj Khan*** reported in (2021) 10 SCC 100 considered the position of law with regard to Section 37 of NDPS Act and held that the test which the High court are required to apply while granting bail is that there are reasonable ground to believe that the accused has not committed any offence and whether he is likely to commit any offence while on bail. Considering the seriousness of offences punishable under the

NDPS Act and in order to curb the menace of drug trafficking in the country, stringent parameters on the grant of bail under the NDPS Act have been prescribed.

The Hon'ble Apex Court Superintendent, NCB, *Chennai vs R. Paul Samy* reported in *(2000) 9 SCC 549* it was held that under the provision of Section 37 of the NDPS Act, it would be too early to take into account and judge the matter regarding non compliance with the formalities during the bail stage. Since recording of findings under Section 37 of the NDPS Act was *sine qua non* for granting bail under the Act. The Apex court also referring Section 37, 52 and 57 of the NDPS Act and set aside the bail granted in the said case and made an observation that non- compliance of Sections of NDPS Act is not a ground to enlarge him on bail and the same has to be tested during the course of trial.

In view of the above discussion, this Court is not inclined to enlarge the petitioner on bail.

Consequently, the bail application is rejected.

However, the learned trial court is directed to take sincere effort to dispose of the matter as early as possible.

In terms of the above, this bail application stands disposed of.

JUDGE

Comparing Assistant