

GAHC010000862024



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

Case No. : Bail Appln./53/2024

SHAHIDUL ISLAM BEPARI @ PINTU
SON OF- JAHAN UDDIN BEPARI, RESIDENT OF- DHARAMSALA PT-IV, PS-
DHUBRI, DISTRICT- DHUBRI, ASSAM

VERSUS

THE STATE OF ASSAM AND ANR
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

2:DEEPJYOTI ENGTI
SI OF DHARAMSALA OP
UNDER DHUBRI PS
DIST.- DHUBRI
ASSA

Advocate for the Petitioner : MR. K SARMA

Advocate for the Respondent : PP, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN**

ORDER

Date : 13.02.2024

Heard Mr. K. Sharma, learned counsel for the accused. Also heard Mr. R.J. Baruah, learned Addl. P.P. for the State respondent.

2. This application, under Section 439 Cr.P.C. is preferred by accused, **Shahidul Islam Bepari @ Pintu**, who has been languishing in jail hajoot in connection with **Dhubri P.S. Case No. 345/2023**, under Sections 22(c) of the Narcotic Drugs and Psychotropic Substance Act, since 02.09.2023, for grant of bail.

3. It is to be noted here that above noted case has been registered on the basis of an FIR lodged by one Deepjyoti Engti, of Dharmashala W.P. on 01.09.2023.

4. The essence of allegation, made in the FIR, dated 01.09.2023, is that acting on a tip off, the informant and his police staff conducted search in the house of one Rofiqul Hoque @ Mirajul Hoque and apprehended him and recovered 65 plastic container, containing 9 grams of suspected heroine, and 288 Nos. of Spas-Trancan Plus Capsules and seized the same in presence of witnesses. And during interrogation Rofiqul Hoque @ Mirajul Hoque discloses that two more persons namely Abu Bakkar Siddique and Shahidul Islam Bepari @ Pintu and accordingly, he conducted raid in the house of Shahidul Islam Bepari @ Pintu and recovered 190 numbers of suspected Yaba Tablets and total 288 Nos. of Spas-Trancan Plus Capsules and seized the same in presence of the witnesses.

5. Mr. Sharma, learned counsel for the accused, submits that the accused was arrested on 02.09.2023, and since then, he has been languishing in jail hajoot for more than 136 days. Mr. Sheikh, further submits that the investigation herein this case has culminated in submission of charge sheet before the learned Court below and now the case is pending for consideration of charge. Mr. Sharma, further submits that the accused is not named in the FIR and that seriousness of the offence is not a ground to deny bail to the accused. To

bolster his submission, Mr. Sharma has referred to a decision of Hon'ble Supreme Court in **Sagar Tattaram Gorkhe And Another vs. State of Maharashtra**, reported in **(2021) 3 SCC 725**. Mr. Sharma, also submits that the accused is innocent and he will face the trial and he will appear before the learned Court below on each and every date and, therefore, it is contended to allow this petition.

6. On the other hand, Mr. R.J. Baruah, learned Addl. P. P. submits that charge against the accused is yet to be framed and that the quantity of contraband substance recovered from the possession of the accused is of commercial quantity and as such, the accused has to satisfy the requirement of Section 37 of NDPS Act but, the accused has failed to satisfy those requirements, and therefore Mr. Baruah has opposed the petition.

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

8. It is not in dispute that the informant has recovered 190 numbers of suspected Yaba Tablets and total 288 Nos. of Spas-Trancan Plus Capsuls from the house of the accused and seized the same in presence of the witnesses. It is also not in dispute that the quantities of the contraband substances, so recovered from the possession of the accused and also from the co-accused are of commercial quantity, and as such the accused person has to satisfy the twin conditions of Section 37 of the NDPS Act that - there is no reasonable ground to believe that the accused is not guilty of the offence and that he is not likely to commit any offence while on bail.

9. But, from the materials on record, specially from the scanned copy of the record and also from case diary received from the learned court below and also

from the submission of learned counsel for the accused, this Court is unable to derive its satisfaction that there exists any reasonable ground for believing that the accused is not guilty of the offence and that he is not likely to commit any offence, while on bail.

10. It is also to be mentioned here that in the case of **Union of India vs. Ajay Kumar Singh @ Pappu**, Criminal Appeal No.952 of 2023 [Arising out of SLP (CRL.) No.2351 OF 2023], decided on 28 March, 2023, Hon'ble Supreme Court, while setting aside the order of granting bail by the Allahabad High Court, to the accused involving in commercial quantity of contraband substance, has held as under:-

“In view of the above provisions, it is implicit that no person accused of an offence involving trade in commercial quantity of narcotics is liable to be released on bail unless the court is satisfied that there are reasonable grounds for believing that he is not guilty of such an offence and that he is not likely to commit any offence while on bail.”

11. Same principle is echoed by Hon'ble Supreme Court in the case of **NCB vs. Mohit Agarwal** (Criminal Appeal Nos. 1001-1002 of 2022, arising out of petitions for Special Leave to Appeal (Crl.) No. 6128-29 of 2021, decided on 19 July, 2022.

12. In view of above, and also in view of the nature and gravity of the offence and the punishment prescribed for the same, this Court is of the opinion that this is not a fit case to grant the privilege of bail under Section 439 of the Cr.P.C. to the accused and therefore, the same stands **dismissed**. I have gone through the case law **Sagar Tattaram Gorkhe And Another (supra)** referred by Mr. Sharma and I find that the ratio laid down therein would not advance the case of the accused in view of the decisions of Hon'ble Supreme Court discussed herein above.

13. However, the learned Court below is directed to expedite the trial and conclude the same at the earliest possible time, without being influenced by any of the observations made by this court herein above. And if necessary, the learned court below shall take

recourse to the provision of Section 309(1) of the Cr.P.C.

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

JUDGE

Comparing Assistant