

GAHC010045112024



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

Case No. : Bail Appln./636/2024

LAL BADSHA
S/O- LATE SABED ALI, RESIDENT OF VILL. GORAIMARI PT-II, P.S. AND
DIST. BONGAIGAON, ASSAM

VERSUS

THE STATE OF ASSAM
REP BY THE PP ASSAM

Advocate for the Petitioner : MR. M KHAN

Advocate for the Respondent : PP, ASSAM

**BEFORE
HON'BLE MR. JUSTICE ROBIN PHUKAN**

ORDER

05.03.2024

Heard Mr. M. Khan, learned counsel for the accused and also heard Mr. B. Sarma, learned Additional Public Prosecutor, Assam, appearing for the State respondent.

2. This application, under section 439 Cr.P.C. is preferred by accused, namely, Lal Badsha, who has been languishing in jail hazot since 07.01.2024, in connection with Bongaigaon P.S. Case No.10/2024, under Section 21(b)/29 of the NDPS Act, for grant of bail.

3. It is to be noted here that the above noted case has been registered on the basis of an FIR lodged by S.I. Sukesh Ghosh, I/C North Bongaigaon P.P., on 07.01.2024. The essence of allegation made in the aforesaid FIR is that on that day, at about 7:10 p.m., the informant along with staff apprehended Lal Badsha of Delhi Punjabi Dhaba, while he was coming from Bijni side and about to enter into his Dhaba and conducted search of his person recovered 25.52 gm of suspected Heroin from his person and seized the same by preparing seizure list in presence of witnesses.

4. Mr. Khan, learned counsel for the accused, submits that the accused has been languishing in jail hazot for last 59 days and that this is the 2nd bail application preferred by him and the earlier one, being Bail Appln. No.246/2024, was dismissed by this Court vide order dated 22.02.2024, after perusing the case diary. Mr. Khan further submits that the ground for filing this 2nd application is length of detention and that this Court while dismissing the earlier petition has taken note of the Special NDPS Case No.06/2021, wherein the accused was standing trial and that he is habituated to the offences under the NDPS Act, but the same cannot be the ground to dismiss the petition in view of the decision of the Hon'ble Supreme Court in the case of **Prabhakar Tewari Vs. State of U.P. & Anr.** in Criminal Appeal No.152/2020, wherein it has been held that the offence alleged no doubt grave and serious and there are several criminal cases pending against the accused and these factors themselves cannot be the basis for refusal of prayer for bail. And under the aforementioned facts and circumstances, Mr. Khan contended that the accused may be enlarged on bail.

5. On the other hand, Mr. B. Sarma, learned Additional Public Prosecutor, Assam, submits that the accused could not show any change of circumstance in his favour and that length of detention is not a ground while the earlier bail application was rejected after perusing the case diary and referring to page-11 of the petition, Mr. Sarma submits that the accused himself admitted that he was earlier arrested in connection with Dhaligaon P.S. Case No.150/2021, under Section 17(c)/29 of the NDPS Act and that it is established that he is habituated to the offences under the NDPS Act and therefore, Mr. Sarma has contended to dismiss the petition.

6. Having heard the submission of learned Advocates for both the sides, I have carefully gone through the petition and the documents placed on record and also perused the decision of Hon'ble Supreme Court referred by Mr. Khan, learned counsel for the accused.

7. It is not in dispute that the first bail application, being Bail Appln. No.246/2024 was dismissed by this Court after perusing the case diary vide order dated 22.02.2024 and the ground for dismissal was the nature and gravity of the offence and that he is habituated to the offence under the NDPS Act, as earlier he was arrested in connection with Dhaligaon P.S. Case No.150/2021, under Section 17(c)/29 of the NDPS Act. Though the learned counsel for the accused submits that this petition is preferred on the ground of length of detention, yet, the same appears to be not a satisfactory ground to review the earlier decision dated 22.02.2024.

8. I have gone through the decision of the Hon'ble Supreme Court referred by Mr. Khan, learned counsel for the accused and I find that the ratio laid down therein is not applicable in all force to the facts and circumstances here in this case, as the present case has been registered under the special statute i.e. NDPS Act, and the observation in the aforementioned case was made while dealing with the cases under the IPC.

9. As the learned counsel for the accused failed to show any change of circumstance in favour of the accused, this Court is of the view that this 2nd bail application is not maintainable and therefore, the same stands dismissed.

**Sd/- Robin Phukan
JUDGE**

Comparing Assistant