

GAHC010059942024



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

Case No. : Bail Appln./845/2024

SADEK ALI
S/O LATE HANIF ALI
R/O NO. 1 TUPAMARI
P.S. NAGARBERA
DIST. KAMRUP, ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. Y S MANNAN

Advocate for the Respondent : PP, ASSAM

BEFORE
HON'BLE MR. JUSTICE ROBIN PHUKAN

ORDER

10.06.2024.

Heard Mr. Y. Mannan, learned counsel for the accused. Also heard Mr. P.S. Lahkar, learned Addl. P. P. for the State respondent.

2. This application, under Section 439 of the Code of Criminal Procedure, 1973, is preferred by accused **Sadek Ali**, who has been languishing in jail hazoot since 17.07.2022, in connection with the **Special Sessions [NDPS] Case No. 60/2022**, arising out of Nagarbera P.S. Case No. 66/2022, under Sections 22(C)/29 of the NDPS Act, pending before the learned Special Judge, Kamrup, Amingaon, for grant of bail.

3. Be it noted here that the aforementioned case has been registered on the basis of an FIR lodged by SI Mirel Ahmed of Nagarbera P.S. on 16.07.2022.

4. The essence of allegations, made in the said FIR is that on 16.07.2022, at about 03.15 pm, acting on a tip off, the informant (S.I. Mirel Ahmed) along with staff, intercepted one Glamour Motor Cycle, bearing registration No. AS-25 R 9021, at Nagarbera Bazar, near RCC Bridge and on checking the vehicle he found 12 bottles of Codine Phosphet & Chlorphniramine Maleate Syrup and thereafter, he apprehended the accused Mominul Islam and seized the contraband articles, preparing seizure list.

5. However, the allegation against the present accused is that during interrogation arrested accused Mominul Islam stated that he brought the said contraband substances from Sadek Ali. Accordingly, present accused, namely, Sadek Ali was apprehended and recovered 197 bottles of Codine Syrup from his possession, while he was trying to fled away.

6. Mr. Mannan, learned counsel for the accused, submits that this is the second bail application, preferred on the ground that while dismissing the first bail application vide order dated 25.01.2024, the learned trial Court was directed to complete the trial as expeditiously as possible, and to take recourse to the provision of Section 309(1) of the Cr.P.C., if necessary. Despite, the

learned trial court had failed to carry out the direction so issued by this court. Mr. Mannan also submits that the accused was arrested on 16.07.2022, and since then he has been languishing in jail hazoot for more than one year eleven months and though 9 witnesses have been examined so far out of 11 witnesses cited in the charge sheet, yet three witnesses are yet to be examined and the nine witnesses examined so far also not implicated the accused with the offence charges. Mr. Mannan further submits that the accused was arrested only on the basis of statement of the co-accused and recovery of contraband substances from the accused has not been established so far. Referring to a decision of Hon'ble Supreme Court in **Sujit Tiwari vs. The State of Gujarat** reported in **AIR 2020 SC 667**, Mr. Mannan that the chance of conviction of the accused is remote herein this case and therefore it is contended to allow this petition.

7. On the other hand, Mr. P.S. Lahkar , the learned Addl. P.P. submits that the contraband substances recovered from the possession of the accused is of commercial quantity and as such the accused has to satisfy the twin requirement of section 37 of the NDPS Act but the accused has failed to satisfy the twin requirement of section 37 of the NDPS Act, and that trial is going on and only three witnesses remains to be examined and in their statement under section 161 Cr.P.C. those witnesses implicated the present accused and as such it pre-mature to arrive at a finding that there is no material at this stage and therefore, it is contended to dismiss the petition.

8. The submissions of learned Advocates of bothsides receives due consideration of this court. I have also gone through the relevant record of the learned court below and also gone through the Status Report, received from the learned Court below. Also, I have gone through the decision of Hon'ble Supreme Court **Sujit Tiwari** (supra) wherein bail was granted to the accused of said

case considering possibility of acquittal.

9. It is not in dispute that the accused was arrested on 17.07.2022, and since then he has been languishing in jail hazoot for more than one year eleven months. Further it appears that the learned court below had framed charge against the present accused under Section 21(C)/29 of the NDPS Act on 18.01.2023 and as many as 9 witnesses have been examined so far by the prosecution side out of 11 witnesses. There appears to be no delay in the trial before the learned trial court.

10. The record of the learned court below also indicates that the quantities of the contraband substances, so recovered from the possession of the present accused is 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.

11. But, from the submission of Mr. Mannan and also from the materials placed on record, and also from the scanned copy of the record received from the learned court below, 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. However, it appears from the scanned copy of the record that some prosecution witnesses, examined so far, have not supported the prosecution version. But, it also appears that three witnesses are yet to be yet to be examined and according to Mr. Lahkar, the learned Addl. P.P., the witnesses yet to be examined have implicated the accused with the offence charged. That being so, it is premature to arrive at a conclusion, at this stage, that there is no evidence against the accused. That being so the ratio laid down in the case of **Sujit**

Tiwari (supra) would not advance the case of the accused.

12. It is to be noted 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, a bench of co-equal strength of 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.”

13. In the given facts and circumstances on the record 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 accordingly, the same stands **dismissed**.

14. However, this court hope and trust that the learned trial court shall make an endeavor to complete the trial as soon as practicable, without being influenced by any of the observations made by this court herein above.

JUDGE

Comparing Assistant