

GAHC010014682024



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

Case No. : Bail Appln./229/2024

ROFIQULISLAM @ ROFIKUL ISLAM
S/O LATE SAJU ALI
R/O HAZARIPARA
P.S. BILASIPARA
DIST. DHUBRI, ASSAM

VERSUS

THE STATE OF ASSAM
TO BE REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR H R A CHOUDHURY

Advocate for the Respondent : PP, ASSAM

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

ORDER

25.01.2024

Heard Mr. I.U. Choudhury, learned counsel for the accused and also heard Mr. R.J. Baruah, learned Additional Public Prosecutor, Assam, appearing for the State respondent.

2. This application under Section 439 Cr.P.C. is preferred by accused, namely, Rofiqul Islam @ Rofikul Islam, who has been languishing in jail hazot since 06.12.2023, in connection with Bilasipara P.S. Case No.463/2023, under Section 21(c) of the NDPS Act, for grant of bail.

3. It is to be noted here that the aforementioned case has been registered on the basis of an FIR lodged by S.I. Debashis Bora on 05.12.2023. The essence of allegation made in the aforesaid FIR is that acting on a tip off they have apprehended one person, namely, Rofiqul Islam on 05.12.2023, at about 6:50 p.m. and recovered three packets of suspected heroin in three soap boxes, weighing 35 gm without the packet.

4. Mr. Choudhury, learned counsel for the accused submits that the accused was arrested on 06.12.2023, and since then he has been languishing in jail hazot. Referring to the FIR and also to the forwarding report and the order of the learned Court below at page 22 and also to the seizure list at page 27, Mr. Choudhury submits that the quantity of contraband substance recovered from the alleged possession of the accused is of 35 gm only, which is of intermediate quantity, but the I.O. has registered the case under Section 21(c) of the NDPS Act and the case ought to have registered under Section 21(b) of the NDPS Act and that since the quantity of contraband substance, allegedly recovered from the possession of the accused, is of intermediate quantity, the rigors of Section 37 of the NDPS Act will not be applicable in this case and that the accused is a local person and he is ready to cooperate with the investigating agency and therefore, it is contended to allow the petition.

5. On the other hand, Mr. R.J. Baruah, learned Additional Public Prosecutor, Assam, submits that at this stage the case diary may be called for.

6. Having heard the submission of learned Advocates of both sides, I have carefully

gone through the petition and the documents placed on record.

7. Indisputably the quantity of contraband substance allegedly recovered from the possession of the accused is of intermediate quantity and as such the rigors of Section 37 of the NDPS Act will not come into play here in this case. The accused is indisputably behind the bar for last 51 days.

8. Having regards to the nature and gravity of the offence and balancing the period of detention against the same, this Court is of the view that further custodial detention of the accused may not be required in the interest of investigation and therefore, this Court is inclined to allow this petition.

9. It is provided that on furnishing a bond of ₹ 50,000/- with one surety of like amount to the satisfaction of the learned Special Judge (NDPS), Bilasipara, the accused, namely, Rofiqul Islam @ Rofikul Islam, who has been languishing in jail hazot since 06.12.2023, in connection with Bilasipara P.S. Case No.463/2023, under Section 21(c) of the NDPS Act, be enlarged on bail.

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

Sd/- Robin Phukan
JUDGE

Comparing Assistant