

GAHC010040972024



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

**Case No. : Bail Appln./590/2024**

MD HAMIDULLAH @ MD. HAMIDUL  
S/O- LATE APABA, R/O- VILL- SORA, MANING LEIKAI, P.S. AND DIST.-  
KAKCHING, (MANIPUR)

VERSUS

THE STATE OF ASSAM  
REP BY THE PP ASSAM

**Advocate for the Petitioner : MS. S K NARGIS**  
**Advocate for the Respondent : PP, ASSAM**

**BEFORE  
HONOURABLE MRS. JUSTICE MALASRI NANDI**

**ORDER**

**26.07.2024**

1. Heard Ms. S. K. Nargis, learned counsel appearing for the accused petitioner as well as Mr. R. J. Baruah, learned Addl. P.P., Assam appearing for the State respondent.
2. By filing this petition under Section 439 Cr.P.C., the accused-petitioner, namely, **Md. Hamidullah @ Md. Hamidul**, have prayed for grant of bail in connection with **NDPS P.S. Case No.161/2023** arising out of Jalukbari PS Case No. 269/2023 under Sections **21(c)/29 of NDPS Act.**

3. The factual matrix leading to this bail application is that an FIR has been lodged on 06.05.2023 before the O/C, Jalukbari PS stating *inter alia* that on 05.05.2023 at about 7.20 pm on the basis of source information that one drug paddler Motibar Bhuyan was carrying narcotic drug through a public transport bus bearing No. AS 01 QC 2372. Accordingly, the informant along with his staff rushed to the spot and conducted Naka checking in front of DCPW Office, Jalukbari and the said bus was intercepted. The police searched the bus and recovered a black colour bag having psychotropic substances and a small cartoon inside the bag. Around 9200 numbers of Yaba tablets were found which were duly seized and the accused Motibar Bhuyan was arrested. On being asked, the arrested accused informed that three of his associates were in hotel New Castle at Bharalumukh and rest three were boarded at Sheikh lodge at Gorchuk. Thereafter, two teams were sent in both the locations and they apprehended the six accused persons including the present petitioners. Accordingly, a case was registered vide Jalukbari PS Case No. 269/23 under Section 21(C)/29 of NDPS Act.

4. It was urged by the learned counsel for the petitioner that in the earlier occasion the petitioner approached this Court by filing a regular bail application vide BA No. 2480/2023 and by order dated 25.08.2023, this Court was pleased to reject the bail petition without considering the order dated 27.09.2022 passed in BA No. 2090/2022 whereby this Court was pleased to grant bail to the similarly situated person.

5. It is further submitted that no any contraband item was recovered from the possession of the petitioner.

6. It is also the submission of the learned counsel for the petitioner that the petitioner has been languishing in judicial custody for more than one year and

charge-sheet has already been laid. As such there is no question of hampering the investigation or tampering with the evidence. It is further submitted that the charge was framed by the trial court against the present petitioner under Section 29 of NDPS Act wherein the maximum punishment is for three years. Considering the length of detention, the petitioners may be enlarged on bail.

In support of his submission learned counsel has placed reliance on the following bail applications:

- (i) *BA No. 3716/2023 (Ajay Kr. Singh vs Union of India).*
- (ii) *BA No. 3961/2023 (Nil Kamal Biswas vs State of Assam.)*
- (iii) *BA No. 4159/2023 (Md. Allauddin vs Union of India).*

7. In response, Mr. R. J. Baruah, learned Additional Public Prosecutor has submitted that if the case is proved against the main accused under Section 22(C) of NDPS Act, the petitioner is liable to be punished with the punishment provided for the said offence. It is not acceptable as the charge has been framed against the petitioner under Section 29 of NDPS Act, he may be enlarged on bail as the punishment is lesser than the alleged offence.

8. Having heard the learned counsel for the parties and after going through the scanned copy of trial court record, it reveals that the petitioner was arrested on 05.05.2023 and charge-sheet has been laid against the petitioner under Section 22(C)/29 of NDPS Act on 25.10.2023 within the statutory period. It also appears that charge was framed on 14.03.2024 and the case is now pending for examination of the witnesses.

Section 29 of NDPS Act is reproduced as follows:

***“Punishment for abetment and criminal conspiracy.***

*(1) Whoever abets, or is a party to a criminal conspiracy to commit, an offence punishable under this Chapter, shall, whether such offence be or*

*be not committed in consequence of such abetment or in pursuance of such criminal conspiracy, and notwithstanding anything contained in section 116 of the Indian Penal Code (45 of 1860), be punishable with the punishment provided for the offence.*

*(2) A person abets, or is a party to a criminal conspiracy to commit, an offence, within the meaning of this section, who, in India, abets or is a party to the criminal conspiracy to the commission of any act in a place without and beyond India which--*

*(a) would constitute an offence if committed within India; or*

*(b) under the laws of such place, is an offence relating to narcotic drugs or psychotropic substances having all the legal conditions required to constitute it such an offence the same as or analogous to the legal conditions required to constitute it an offence punishable under this Chapter, if committed within India."*

On a bare look at the provision, it is nowhere reflected that the maximum punishment for the offence under Section 29 of NDPS Act is only three years.

Hence, submission of learned counsel for the petitioner cannot be taken into consideration on such plea.

9. The grant of bail in NDPS cases where the recovery of commercial quantity of narcotic drugs is alleged, is circumscribed under the Narcotic Drugs and Psychotropic Substances Act, 1985. Section 37 which says that before grant of bail, the Court must have reason to believe that the petitioner has not committed the offence and in the event of his release, he would not commit similar offence.

10. The issue was considered by the Hon'ble Supreme Court in the case of *State of Kerala and others vs Rajesh*, reported in (2020) 12 SCC 122 as well as in the case of *Narcotic Control Bureau vs Mohit Agarwal* reported in AIR 2022 SC 344 and *Union of India vs Ajay Kumar Singh @ Pappu*, reported in (2023) SCC online SC 3456.

11. In the case in hand, the recovery of huge quantity of narcotic drugs would not justify that the petitioner had no knowledge of the narcotic drugs nor there is any material to substantiate that the petitioner would not commit such offence in the event of release. Hence, this Court is not inclined to enlarge the petitioner on bail.

12. Accordingly, the bail application stands rejected.

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

**JUDGE**

**Comparing Assistant**