

GAHC010108222023



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

Case No. : Bail Appln./1781/2023

FAYSOL AHMED
S/O LATE BASHIR UDDIN, R/O BAGARSANGAN, P.S.-KARIMGANJ, DIST-
KARIMGANJ, ASSAM, PIN-788710

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

Advocate for the Petitioner : MR. S C BISWAS

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

30.06.2023

1) Heard Mr. S.C. Biswas, learned counsel for the petitioner, also heard Mr. R. J. Baruah, learned Additional Public Prosecutor appearing for the state of Assam.

2) This case is fixed for delivery of orders today.

3) This is an application 439 of the Code of Criminal Procedure, 1973 filed by the applicant, namely, *Faysol Ahmed* who has been detained behind the bars, since 28.2.2023, in connection with Karimganj P.S. Case No. 166/2023 under Section 21(C)/25/27A of the NDPS Act, 1985.

4) The facts relevant for consideration of the instant bail application, in brief, are as follows: -

a) That, on 27/2/2023, one Suruj Dutta, SI of Police of Karimganj Police Station lodged an FIR before Officer-in-Charge of Karimganj Police Station, *inter alia*, alleging that on receipt of an information through secret sources the present petitioner has concealed large quantity of narcotic drugs in the house of one Azaduddin, a search operation was on conducted in the house of Azaduddin. During search, about 1600 numbers of 'Yaba' tablets weighing about 161 grams were recovered from a plastic jar which was kept concealed inside a pit besides the house of Azad Uddin.

b) On receipt of the said FIR, Karimganj P.S. Case No. 166/2023 and during the course of investigation the present petitioner was arrested.

5) Mr. S.C. Biswas, learned counsel for the petitioner submits that the present petitioner is innocent and he has been falsely implicated in the case. It is also submitted that the alleged contraband was not seized from the possession of the present petitioner rather it was found outside the house of one Azad Uddin concealed in a pit. The learned counsel for the petitioner has also submitted that as the seized contraband were not recovered from the possession of the present petitioner, the embargo of section 37 of the NDPS Act, 1985 will not be applicable in his case. Learned counsel for the petitioner has also cited some rulings in this regard. I have perused the same.

6) On the other hand, Mr R. J. Baruah, learned Additional Public produced the case diary of Karimganj P.S. Case No. 166/2023 and submitted that there are incriminating materials again the present petitioner in the case diary and considering the fact that the commercial quantity of 'Yaba' tablets which contain methamphetamine is involved in this case, he objected to grant of bail the present petitioner at this stage.

7) I have considered the submissions of learned counsel for both sides and perused the case diary of Karimganj P.S. Case No. 166/2023. On perusal of the case diary, it is found that there are incriminating materials against the present petitioner in the case diary and for which, at this stage, it may not be concluded that there are reasonable grounds for believing that petitioner is not guilty of offence alleged against him. Accordingly, considering the materials in the case diary, this court is of considered opinion that, at this stage, the embargo of section 37 of NDPS Act, 1985 is applicable against the present petitioner. The present petitioner has been detained behind the bar since last 122 days, whereas the statutory period of detention under section 167 of the Code of Criminal Procedure, 1973 read with section 36A(4) of the NDPS Act, 1985 is 180 days.

8) For the reasons stated above, the prayer for bail on the present petitioner is rejected at this stage.

9) Send back the case diary.

10) This Bail application is accordingly disposed of.

JUDGE

Comparing Assistant