

GAHC010013062023



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

Case No. : Bail Appln./336/2023

BINOD SARMA AND 2 ORS
S/O BIPIN SARMA
R/O RANEE PUKHURI PAR,
P.S. AND P.O. TEZPUR
DIST. SONITPUR, ASSAM

2: INAMUL HAQUE @ EMANUL HAQUE
S/OMD. ALI SAHA
R/O BARUAJHAR (BESIMARI)

P.S. AND P.O. DALGAON
DIST. DARRANG
ASSAM

3: JITEN BISWAS
S/O LATE ROSHOMOY BISWAS
R/O NO. 1 PARVATIPUR
HARMOTTY
P.O. AND P.S. LALUK
PIN- 784160

DIST. LAKHIMPUR
ASSA

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. M RAHMAN

Advocate for the Respondent : PP, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA**

ORDER

Date : 27-02-2023

Heard Mr. M. Rahman, learned counsel for the petitioner as well as Mr. R.J. Baruah, learned APP for the State.

2. The petitioners, namely, (1) Binod Sarma, (2) Inamul Haque @ Emanul Haque and (3) Jiten Biswas, who were arrested on 19.12.2022, 19.12.2022 and 13.12.2022 respectively in connection with Special (NDPS) P.S. case no.02/2016 (Bihpuria P.S. case no.455/2016) under section 22(c) of the NDPS Act, are seeking regular bail by filing this application under section 439 Cr.P.C.

3. The learned counsel for the petitioners has produced the order sheet of Special (NDPS) case no.02/2016 and has submitted that as per the order dated 19.12.2022, the petitioner nos.1 and 2 had appeared before the learned trial Court by filing petition no.2223/2022 and 2224/2022 and has prayed for previous bail which was rejected and the said petitioners were taken into custody.

4. The petitioner no.3 namely, Jiten Biswas was arrested and produced before the learned trial Court on 13.12.2022 as reflected in the said order on the said date.

5. The prayer for bail is opposed by the learned APP on the ground that the petitioners are accused in dealing with commercial quantity of contraband which was seized from the petitioners and Bihpuria P.S. case no.455/2016 was registered under section 22(c) of the NDPS Act and it is submitted that the rigors of section 37 of the said Act is not applicable in the said case.

6. The learned counsel for the petitioners has been able to demonstrate from the FIR dated 02.07.2016 that the petitioners were caught red-handed while supplying drugs being 1143 tablets of Spas-Pokran which is tested positive for paracetamol, dicyclomine and tramadol and 120 tablets of Nitrosun-10 which is tested positive for Nitrazepam which are psychotropic in nature.

7. By referring to Entry no.238 ZH of the notification regarding "Specified small and commercial quantity," published in the Gazette on 19.10.2001, it is submitted that the drug "tramadol" was inserted in the said schedule by notification under SO 762(E) dated 26.04.2018. Therefore, on 02.07.2016, the date when the drugs were seized from the petitioner, "tramadol" was not covered by the notification of Narcotic Drugs. In so far, as the FSL report for the Nitrosun-10 is concerned, the learned counsel for the petitioners has been able to demonstrate that as per the said report each Nitrosun-10 was weighing 0.560 grams and total 120 tablets were seized from the possession of the petitioner. Therefore, the total quantity of the narcotic drugs seized from the petitioners would come to 67.2 grams which is an intermediate quantity.

8. Accordingly, notwithstanding that the petitioners is charged under section 22(c)/29 of the NDPS Act, from the hereinbefore referred discussion, the

quantity of drug seized from the petitioners appears to be of intermediate quantity.

9. Accordingly, as the petitioners have already suffered 70 and 77 days respectively, the Court is inclined to release the petitioners on bail on furnishing a bail bond of Rs.1 lakh (Rupees one lakh only) each with two sureties of like amount to the satisfaction of the learned Special Judge, NDPS, Lakhimpur, North Lakhimpur. Out of two bailors, one should offer his/ her immovable property as security for grant of bail.

10. Bail is granted on the following conditions:

- a. The petitioners shall appear before the Court in the present case on all the dates fixed for trial.
- b. The petitioners shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to Court or to any police officer or tamper with the evidence. They shall not, in any manner, try to overawe or influence or intimidate the prosecution witness.
- c. The petitioners shall not obstruct the smooth progress of the trial/ investigation.
- d. The petitioners shall not misuse their liberty in any manner.
- e. The petitioners shall not jump over the bail.
- f. The petitioners shall once again appear before the IO once in

15(fifteen) days and they shall continue to appear once a month till their personal appearance is dispensed with or charge sheet is submitted, whichever is earlier.

g. Along with the bail bond, the petitioners shall also submit an undertaking before the learned trial Court on all date without fail, further undertaking that in the event they cannot appear on any particular date they shall ensure that they are represented by their learned counsel and they shall not dispute their identity and the identity of the witnesses on the date which the petitioners are absent before the trial Court.

h. If the petitioners are found violating any conditions mentioned above, it would be open to the learned trial Court to issue NBWA to ensure expeditious trial.

11. Case diary is returned.
12. Application stands disposed of.

JUDGE

Comparing Assistant