

GAHC010018122023



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

Case No. : Bail Appln./418/2023

MD. NASHED AND ANR
S/O- LATE JANIF AHMED, R/O- VILL.- DINGHARPUR, P.S. MERATHAN, DIST.
MURADABAD, UTTAR PRADESH.

2: MD. MOGISH
S/O- LATE JAHID HUSSAIN
R/O- VILL.- DINGHARPUR
P.S. MERATHAN
DIST. MURADABAD
UTTAR PRADESH

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

Advocate for the Petitioner : MR. P K ROYCHOUDHURY

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE AJIT BORTHAKUR

ORDER

23.03.2023

Heard Mr. PK Roychoudhury, learned counsel appearing for the accused petitioners as well as Mr. R.J. Baruah, learned Addl. P.P., Assam for the State respondent.

By this petition under Section 439 Cr.P.C., the accused-petitioners, namely **1) Md. Nashed and 2) Md. Mogish** have prayed for grant of bail in connection with **Garchuk P.S. Case No.219/2022** corresponding to **NDPS Case No. 221/2022** under Sections **22(c)/29** of the NDPS Act.

The scanned copy of the case diary, as called for, is placed before the Court.

Mr. PK Roychoudhury, learned counsel appearing for the accused petitioners, submits that the accused persons have been in judicial custody for 258 days despite the fact that they were the driver and handyman respectively of the vehicle transporting the seized cartons containing the cough syrup bottles knowing only that those cartons contained soaps. Mr. Roychoudhury further submits that those sealed cartons were loaded onto the truck by the transport company with all relevant documents. Therefore, Mr. Roychoudhury submits that they had no knowledge that the cartons contained any contraband cough syrup bottles and as the police after completion of investigation have laid charge-sheet, further continuation of their detention in judicial custody is not required for the purpose of trial.

Per contra, Mr. R.J. Baruah, learned Addl. Public Prosecutor, submits that the case diary reveals that the accused petitioners, on demand of the police, failed to produce any document in support of their claim of transportation of 20,000 bottles of cough syrup containing codeine phosphate, which amounted to commercial quantity. Therefore, Mr. Boruah submits that in view of the bar in Section 37 of the N.D.P.S. Act, the bail application of the accused petitioners may not be considered favourably.

The allegation is that 139 cartons containing codeine phosphate based cough syrup bottles were recovered and seized while transporting on a truck

bearing registration No. UP 21 BN 8713 driven by the arrested accused petitioners, who were driver and handyman respectively of the said truck without any document.

It is noticed that both the accused petitioners are in judicial custody since 20.07.2022, that is, for 246 days.

The case diary reveals that the above contraband articles were seized while the accused petitioners, driver and handyman respectively, were transported by the truck, mentioned above, without any document in support of valid transportation. The F.S.L. report shows that the samples gave positive tests for codeine phosphate.

There is no indication on the case diary that the cartons were under seal of the alleged transporting company or consignor.

The seized codeine phosphate based cough syrup bottles numbering 20,016 amounted to commercial quantity under the N.D.P.S. Act.

The charge-sheet has been laid under Sections 22(c)/29 of the N.D.P.S. Act against both the accused petitioners. Trial of the case is yet to commence.

Therefore, in view of the bar contained in Section 37 of the N.D.P.S. Act, the accused petitioners are not entitled to be released on bail.

Accordingly, the bail application stands rejected.

The bail application stands disposed off.

JUDGE

Comparing Assistant