

GAHC010020282023



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

Case No. : Bail Appln./381/2023

PRADIP DEKA
S/O- LT. PUNURAM DEKA,
R/O- UTTAR NAGAON,
P.S. AND P.O.- MAZBAT,
DIST.- UDALGURI, ASSAM.

VERSUS

THE STATE OF ASSAM
REP. BY PP, ASSAM.

Advocate for the Petitioner : MR. A DUTTA

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE AJIT BORTHAKUR

ORDER

Date : 10.05.2023

Heard Mr. A. Dutta, learned counsel for the petitioner. Also heard Mr. R. J. Baruah, learned Addl. Public Prosecutor for the State/respondent.

By this petition under Section 439 Cr.P.C., the petitioner, namely, **Sri Pradip Deka**, has prayed for grant of bail in connection with **NDPS Case No. 194/2022** u/s **20(b)(ii)(C)** of the NDPS Act.

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

Mr. A. Dutta, learned counsel appearing for the accused petitioner, submits that the accused has been in judicial custody for 332 days and out of seven listed witnesses, only two prosecution witnesses are examined in the case. Mr. Dutta further submits that the accused, being a permanent resident under Majbat P.S., Assam, there is no chance of him jumping the course of justice.

Opposing the bail application, Mr. R. J. Baruah, learned Addl. Public Prosecutor, Assam submits that the instant case involves illegal possession of 36 kgs. of *ganja* by the accused petitioner. In connection with the case, there is a list of seven witnesses and out of them, two witnesses are examined till date. Further, Mr. Baruah submits that in view of the bar under Section 37 of the NDPS Act, the bail application of the accused petitioner cannot be accepted.

The case relates to recovery and seizure of suspected *ganja*, weighing 36 kgs., from the possession of the accused petitioner.

It is noticed that the accused petitioner has been in judicial custody since 13.06.2022, i.e. for 332 days.

A perusal of the case record reveals that after completion of investigation, the police laid a charge-sheet under Section 20(c)/29 of the NDPS Act against the accused vide order, dated 05.09.2022 and the charge under Section 20(b)(ii)(c) of the said Act was framed vide order, dated 20.10.2022. Thereafter, the learned Trial Court fixed as many as eight dates for evidence of the prosecution witnesses till 03.03.2023 and examined only two seizure witnesses. Both the seizure witnesses have identified the present accused.

However, as held by the Hon'ble Apex Court in a catena of decisions, the accused has a right to speedy justice and inordinate delay in trial of the case does not attract the bar under Section 37 of the NDPS Act.

In view of the facts and circumstances that emerged from the case record, the bail application of the accused petitioner cannot be accepted at the present stage of trial of the case and, accordingly, stands rejected.

However, the learned Trial Court shall make an endeavour to complete recording of evidence of the remaining five prosecution witnesses within a maximum period of four months. After expiry of the aforesaid period or before such expiry, if the prosecution witnesses are examined, the learned Trial Court shall consider the liberty of bail of the accused petitioner, if applied for.

With the above direction, the bail application stands disposed off.

JUDGE

Comparing Assistant