

GAHC010030892023



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

**Case No. : Bail Appln./555/2023**

1. ASIF SEIKH AND ANR  
S/O HARU SEIKH  
VILL- DURGA MANDIR  
P.O. BALADMARI  
DIST. GOALPARA,  
PIN-783121

2: RAFIKUL ISLAM  
S/O JAMALUDDIN  
VILL- KABAITARY PT. V  
P.S. JOGIGHOPA  
DIST. BONGAIGAON  
ASSAM  
PIN-783138

VERSUS

THE STATE OF ASSAM  
REP BY THE PP, ASSAM

**Advocate for the Petitioner : MR. A ROSHID**

**Advocate for the Respondent : PP, ASSAM**

**BEFORE**  
**HON'BLE MR. JUSTICE ROBIN PHUKAN**  
**ORDER**

10.03.2023.

Heard Mr. A. Roshid, learned counsel for the accused and Mr. P.S. Lahkar, learned Addl. P.P., Assam appearing for the State respondent.

This application under Section 439 of the Code of Criminal Procedure, 1973, is preferred by two accused, namely, (1) Asif Seikh and (2) Rafikul Islam, who have been languishing in jail hazot since 29.08.2022, in connection with the Goalpara P.S. Case No. 197/2022, under Sections 22(c)/29 of the NDPS Act, for granting bail.

The said case has been registered on the basis of an FIR lodged by SI - S.K. Ayez, on 27.08.2022, to the effect that acting on a tip off they have conducted search in the house of the accused Asif Seikh situated at Durgamandir, at about 7 pm and recovered 240 numbers of Chlorpheniramine Maleate & Codeine Phosphate Syrup (Xlintus-Forte Cough Syrup 100 ml each) and also they have apprehended one Nayan Kumar Das, and on the basis of their statements conducted search in the house of Rafikul Islam and recovered 50 numbers of Codeine Base Cough Syrup (ToLEX-CC 100 ml each) and seized the same preparing seizure list, in presence of witnesses.

Mr. Roshid, learned counsel for the accused submits that this is the second bail application, and the first one was rejected by this court, vide order dated 04.01.2023, in BA No. 3134/2022, after perusing the case diary, and this application is being filed primarily on the grounds that:

*(1) The accused are languishing in jail hazot for more than 193 days.*

*(2) The father of the accused No.1 Asif Seikh is suffering from illness (but, the learned counsel for the accused could not state in what disease the father of the accused has been suffering from).*

*(3) The children of the accused No.2 Rafikul Islam, is also suffering from fever.*

Mr. Roshid, learned counsel for the accused further submits that the trial is going on and the accused persons will participate in the trial and therefore, it is contended to allow the petition.

On the other hand, Mr. P.S. Lahkar, learned Addl. P.P., Assam, appearing for the

State respondent has vehemently opposed the petition on the ground that the medical documents submitted by the accused are inconclusive to indicate the disease the father of the accused No.1, in which he is suffering from and that the offences are serious in nature, involving commercial quantity of contraband substance and the requirement of Section 37 of the NDPS Act has not been satisfied herein this case and therefore, it is contended to dismiss the petition.

Having heard the submissions of learned Advocates of both sides, I have carefully gone through the petition and the documents placed on the record and also perused the scanned copy of the record, received from the learned Court below.

It appears that after completion of investigation, the investigating officer has laid charge sheet against the accused persons under Sections 22(c)/29 of the NDPS Act and the learned Court below has already framed charges against the accused under the said Sections of law and examined two witnesses and having gone through the statement of the witnesses, it cannot be said at this stage that the charges so framed against both the accused persons are without any basis. Further, it appears that the quantity of contraband substance so recovered from the possession of the accused, are of commercial quantity and to a pointed query, made by this Court, Mr. A. Roshid, learned counsel for the accused, from the materials placed on record and also from the scanned copy of the learned Court below, failed to satisfy this Court that there is no reasonable ground for believing that the accused are not guilty of the charges and that they will not commit similar offence in future, if enlarged on bail.

Mr. A. Roshid, learned counsel for the accused though submits that the accused are behind the bar for 193 days and in that view of the matter, they are entitled to bail, but, this Court is left unimpressed by such submission, in view of the

decision of the Hon'ble Supreme Court in the case of **NCB vs. Mohit Agarwal**, reported in [2022] ) **Supreme (SC) 619**, wherein it has been stated that where commercial quantity of contraband substance is involved, the length of detention is immaterial. Further Mr. Roshid, learned counsel for the accused, has failed to appraise this Court in which disease the father of the accused No.1 is suffering from and the medical documents placed before this Court are also inconclusive to indicate the disease in which he has been suffering from. Mr. Roshid also failed to produce any document relating to the disease, in which the children of the accused No.2 is suffering from.

Under the above circumstances, this Court is of the opinion that this is not a fit case to grant the privilege of bail, under Section 439 of the Cr.P.C. to the accused persons. Accordingly, this bail application stands dismissed.

However, the learned Court below is directed to expedite the trial and conclude the same within a period of three months from today, without being influenced by any of the observation made herein above. If necessary, the learned court below shall take recourse to the provision of Section 309(1) of the Cr.P.C.

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

JUDGE

**Comparing Assistant**