

GAHC010031642023



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

Case No. : Bail Appln./541/2023

PHILIP KUMAR DEY
S/O LATE KALI KUMAR DEY
R/O SONAI ROAD, SILCHAR
UNDER SILCHAR POLICE STATION,
IN THE DISTRICT OF CACHAR, ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR SISHIR DUTTA

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE AJIT BORTHAKUR

ORDER

Date : 03.05.2023

Heard Mr. S Dutta, learned Senior Counsel for the accused petitioner as well as Mr. MP Goswami, learned Addl. P.P., Assam for the State respondent.

By this petition under Section 439 Cr.P.C., the accused-petitioner, namely, **Philip Kumar Dey**, has prayed for grant of bail in connection with **Special (NDPS) Case No. 122/2021** under

Sections 22 (c)/25/29 of the NDPS Act.

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

Mr. S Dutta, learned Senior Counsel for the accused petitioner submits that the accused has been in judicial custody for more than one year since 23.03.2022 although during house search only 90 packets of Korean cigarettes were seized and this led to an assumption that he was an associate of co-accused one Anjan Nath. Drawing attention to the grounds of arrest contained in the forwarding report, Mr. Dutta submits that co-accused in his statement disclosed that the present accused and he were trafficking drug like cigarettes, betel nuts (Burmese) since long from Mizoram. Mr. Dutta, therefore, submits that the accused petitioner ought not to have been booked under the NDPS Act.

Opposing the bail application Mr. M Goswami, learned Addl. P.P., submits that the case diary reveals that the learned trial court is yet to consider the charges against the accused petitioner and the case diary reveals that the accused was constantly in contact with the primeaccused Anjan Nath in drug trafficking. Therefore, Mr. Gowami submits that in view of the bar under Section 37 of the NDPS Act, the bail application may be dismissed.

The case relates to recovery and seizure of 24.155 Kg of Yaba tablets from the house of accused Abdul Basit and Samsul Noor. The seized tablets contained Methamphetamine.

It is noticed that the accused petitioner is in judicial custody for 406 days since 23.03.2022.

A perusal of the case record, reveals that the police, after completion of investigation laid a charge-sheet under Sections 22 (c)/25/29 of the NDPS Act against the present accused and two others vide order, dated 07.06.2022, The charges are yet to be considered by the learned trial court.

The FSL report shows that the sample of seized tablets gave positive tests for Methamphetamine.

On reading of the statements recorded under Section 161 CrPC available on the case diary, it is *prima facie* revealed that he deals in export and import of Burmese supari and foreign cigarettes in association with Anjan Nath and others. 90(ninety) packets of cigarettes were recovered from his house. The investigation is completed with the filing of the charge-sheet

against him, who is a permanent resident under Silchar PS.

Therefore, this Court is of the opinion that restriction of Section 37 of the NDPS Act may not come against him and accordingly, his further continuation of detention for the purpose of trial may not be warranted.

In the premises, it is provided that the accused petitioner, named above shall be released on bail of **Rs. 1,00,000/- (One Lakh only)** with one surety of like amount to the satisfaction of the learned **Special Judge (NDPS Act), Karimganj** subject to the following conditions-
:

- i) That the accused petitioner shall continue to appear before the learned trial Court on all dates to be fixed from time to time till the case is disposed of;
- (ii) That the accused petitioner 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 the Court; and
- (iii) That the accused petitioner shall refrain from committing any similar offence in future, of which he is accused of commission.

Be it mentioned here that any observation made in this bail order shall have no bearing in the judicial discretion of the learned court below at the time of consideration of charges.

This disposes of the bail application.

JUDGE

Comparing Assistant