

GAHC010032242023



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

Case No. : Bail Appln./517/2023

NIMAI SINGH
S/O- KUNJA BIHARI SINGH ,
R/O- PASCHIM NANDAPUR,
P.S- HOJAI, DIST- HOJAI, ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY PP, ASSAM

Advocate for the Petitioner : MR. J I BORBHUIYA

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE AJIT BORTHAKUR

ORDER

12.04.2023

Heard Mr. J.I. Borbhuiya, learned counsel for the accused petitioner as well as Mr. R.J. Baruah, learned Addl. Public Prosecutor, Assam for the State respondent.

By this 3rd petition under Section 439 Cr.P.C., the accused petitioner, namely **Nimai Singh** has prayed for grant of bail in connection **NDPS Case No.50/2021** under Sections **20(b)(ii)(c)/29** of the NDPS Act, 1985 corresponding to **Dillai P.S.**

Case No. 27/2021, pending in the Court of learned Special Judge (NDPS Act), Karbi Anglong, Diphu.

The earlier bail applications of the accused being B.A. Nos. 2939/2021 and 2217/2022 were rejected by this Court vide orders, dated 06.05.2022 and 21.10.2022.

The scanned copy of case record is received.

Mr. J.I. Borbhuiya, learned counsel for the accused petitioner, submits that although charges were framed against the accused petitioner and two others on 01.11.2021, only 5(five) prosecution witnesses out of 13 (thirteen) listed witnesses, who are primarily the seizure witnesses, have been examined and they have not implicated the accused petitioner. Therefore, Mr. Borbhuiya submits that continuation of detention of the accused petitioner in judicial custody is not warranted.

Per contra, Mr. R.J. Baruah, learned Addl. Public Prosecutor, submits that the case involves illegal possession of commercial quantity of ganja collectively by the accused and 02(two) co-accused persons and it is not true that none of the P.Ws examined in the case has implicated the accused petitioner. In this regard, Mr. Baruah has emphasized on the evidence of P.W. 1 and stated that if liberty of bail is granted to the accused petitioner at the present stage of trial of the case on mere ground of length of detention, the remaining part of trial of the case may be adversely affected. Mr. Baruah also cites the bar contained in Section 37 of the N.D.P.S. Act.

The case relates to recovery and seizure of 20.67 kg. of ganja (cannabis) out of the joint possession of the accused petitioner and two others.

It is noticed that the accused petitioner has been in judicial custody since 28.06.2021.

A perusal of the case record reveals that charges under Sections 20(b)(ii)(c)/29 of the N.D.P.S. Act were framed vide order, dated 01.11.2021. Thereafter, the prosecution has examined 05(five) witnesses out of 13(thirteen) listed witnesses in

the charge-sheet.

On scrutiny of the evidence of the prosecution witnesses, so far examined, it is revealed that the accused petitioner was supposed to receive the seized contraband. The accused petitioner's complicity in the commission of the alleged offences will only be clear when other material witnesses are examined. At the present stage of trial of the case, it cannot conclusively be said that the accused petitioner was not guilty of the charges. However, this presumption is subject to final outcome on completion of trial of the case.

In view of the above reasons and the bar contained in Section 37 of the N.D.P.S. Act, this Court is of the opinion that the benefit of Section 439 Cr.P.C. if granted at the present stage, will likely to adversely affect the remaining part of fair trial of the case.

Therefore, the bail application of the accused petitioner stands rejected.

However, the learned trial Court is directed to make an endeavour to complete the trial of the case without further unnecessary delay.

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

JUDGE

Comparing Assistant