

GAHC010043212023



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

Case No. : Bail Appln./734/2023

JOINUL UDDIN @ JOYNUL HOQUE
S/O KAMAL UDDIN
R/O VILL- JAGODISHPUR PART(V), P.O. JAGADISHPUR, P.S. KATIGORAH,
DIST. CACHAR, ASSAM

VERSUS

THE STATE OF ASSAM
TO BE REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. S C BISWAS

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE AJIT BORTHAKUR

ORDER

Date : 12.04.2023

Heard Mr. SC Biswas, learned counsel for the accused petitioner as well as Mr. RJ Baruah, learned Additional Public Prosecutor, Assam for the State respondent.

By this petition under Section 439 Cr.P.C., the accused-petitioner, namely, **Joinul Uddin @ Joynul Hoque**, has prayed for grant of bail in connection with **Karimganj P.S. Case**

No.412/2021 under Sections 22(C)/29 of NDPS Act corresponding to Special NDPS Case No. 39/2021.

Scanned copy of case records is received.

Mr. S. C. Biswas, learned counsel for the petitioner submits that in the above mentioned case charges were framed on 14.03.2022 but thereafter, not a single witness out of eight listed witnesses in the charge-sheet has been examined by the learned trial court causing prejudice to the accused petitioner's right to speedy justice.

Opposing the bail application Mr. RJ Bruah, learned Additional Public Prosecutor, submits that charges were framed under Sections 22 ©/29 of the NDPS Act against the accused petitioner and another on 25.04.2022. However, Mr. Boruah submits, thereafter, the prosecution could not produce and examine the listed witnesses despite steps were taken regularly for service of summons due to transfer and posting of the official material witnesses at remote locations of the country. Mr. Boruah, learned Additional Public Prosecutor, submits that as the accused petitioner has been in judicial custody efforts will be made to ensure their presence in court for their evidence. Concluding the submission Mr. Borah submits that in view of the incriminating material collected during investigation and the bar in granting bail to accused involving commercial quantity of drugs contained in Section 37 of the NDPS Act, the bail application of the accused petitioner if granted may jeopardise a fair and speedy trial of the case.

The case relates to recovery and seizure of 1970 nos. of YABA tablets containing Methamphetamine vide the FSL report weighing 201.16 grams from the exclusive joint possession of the present accused petitioner and another.

It is noticed that the accused petitioner is in judicial custody for 715 days since 27.04.2021.

On scrutiny of case record, it appears that after framing of the charges on 25.04.2022, the learned trial court has been consistently trying to ensure production of the listed witnesses of the prosecution for evidence.

The record shows that after framing of charges, the case proceeded to the stage of evidence of witnesses on several dates i.e. on 09.05.2023, 06.06.2022, 02.07.2022, 01.08.2022, 25.08.2022, 22.09.2022, 28.10.2022, 11.11.2022, 12.12.2022, 13.12.2022, 09.01.2023, ,

03.02.2023, 03.03.2023 and 31.03.2022, but none of the witnesses appeared on the aforesaid dates fixed.

In view of the above reasons, which are not attributed to either the learned trial court nor the prosecution till date, this Court is of the considered opinion that as the charges involve illegal possession of the commercial quantity of contraband drugs and in view of the bar in Section 37 of the NDPS Act, the accused is not entitled to the benefit of Section 439 CrPC at the present stage of trial of the case until all material witnesses are examined.

Accordingly, the bail application stands rejected.

The learned trial Court is, however, directed to make an endeavour for early disposal of the case avoiding unnecessary adjournments.

Bail Application stands disposed off.

JUDGE

Comparing Assistant