

GAHC010048292023



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

Case No. : Tr.P.(Crl.)/4/2023

HABIJUL ALOM LASKAR AND ANR
S/O- ANOWAR HUSSAIN, R/O- VILL.- BONGRAM, P.S. DHOLAI, DIST.
CACHAR, ASSAM

2: APPAN HUSSAIN LASKAR
S/O- KALU MIA LASKAR
R/O- BAGHA BAZAR
P.S. DHOLAI
DIST. CACHAR
ASSA

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

Advocate for the Petitioner : MRS. R RONGMEI

Advocate for the Respondent : PP, ASSAM

**BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA**

ORDER

Date : 09.03.2023

Heard Mrs. S. R. Rongmei, learned counsel for the petitioners. Also heard Mr. D. Das, learned Additional Public Prosecutor for the State respondent.

This is an application under Section 407 of the Code of Criminal Procedure, 1973, praying for transfer of Special NDPS Case No. 132/2022, under Sections 22(C)/25/29 of the NDPS Act, 1985, from the Court of learned Sessions Judge, Karimganj, to the Court of learned Special Judge, Cachar, Silchar.

It is submitted by the learned counsel for the petitioners, Mrs. R. Rongmei, that various inconvenience are facing in conducting the trial at Karimganj and the accused/petitioners are presently kept in Silchar Central Jail and all the witnesses are also from the Cachar, Silchar. Further it is submitted that the distance from the Central Jail Silchar to Karimganj is about 35 kms, which also consume valuable time of the Court and it is also hampering the speedy trial of the case. Further, due to absence of any Special Judge at Karimganj to try the NDPS case, the learned Sessions Judge, Karimganj, is trying the case and for which, there is reasonable doubt in speedy trial of the case. It is also submitted that vide Government Notification dated 31.12.2022, the existing Administrative District of Karimganj will be transferred or changed as Administrative District Cachar. Accordingly, it is prayed to transfer the present case from the Court of learned Sessions Judge, Karimganj, to the Court of learned Special Judge, Cachar, Silchar.

In this context, the learned Additional Public Prosecutor, Mr. D. Das, has submitted that the order of transfer of the Administrative District Head is only the Government Notification and vide the said Notification, it will not cause any effect on the Judicial Court and in the same time, by the instant petition, the petitioners cannot show any prejudice to be caused to the them if the case is tried by the learned Sessions Judge, Karimganj. Further it is submitted that the witnesses, being the resident of Cachar, Silchar, will no way affect in the trial of the case and it is the matter to be looked by the prosecution and not by the defence as to how the case will be conducted or proceeded in the District of Karimganj. If any inconvenience is caused, it is the best option for the prosecution to move a petition before the concerned Court, but the accused/petitioners have no *locus standi* to file the application under Section 407 of the Code of Criminal Procedure for transfer of the case and accordingly, it is prayed for dismissal of the same.

After hearing the submissions of learned counsels of both sides and also considering the entire aspects of the case, it is seen that keeping the accused/petitioners in the Central Jail Silchar cannot be the ground for the transfer of the case and the matter can be very well looked into by the prosecution as well as by the jail authority if any inconvenience is caused to the petitioner. In the same time, it is seen that the case is fixed for consideration of charge and hence, it is not the stage to call for the witnesses to appear before the Court of learned Sessions Judge. Further, in some districts where Special Judge, NDPS, is not appointed, all the Sessions Judge and Additional Sessions Judge are dealing with the case on the strength of Special Judge, NDPS.

However, the learned Special Judge can expedite the trial of the case considering the fact that the accused is in custody since 03.09.2022.

With the above observation, the transfer petition stands disposed of with a direction to the learned Court below to dispose of the case as expeditiously as possible.

JUDGE

Comparing Assistant