

GAHC010051452023



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

Case No. : Bail Appln./895/2023

HUSSAIN AHMED KHAN
S/O LATE TASMIL UDDIN KHAN
VILL- EAST TONGIBARI
P.S. RATABARI
DIST. KARIMGANJ, ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. A CHOUDHURY

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE AJIT BORTHAKUR

ORDER

09.05.2023

Heard Mr. A. Choudhury, learned counsel for the accused petitioner. Also heard Mr. B. Sarma, learned Addl. P.P., Assam appearing for the State respondent.

By this second petition under Section 439 Cr.P.C., the accused/petitioner, namely **Hussain Ahmed Khan** has prayed for grant of bail in connection **Ram Krishna Nagar P.S. Case No. 40/2022** under Sections **22(c)/25/29** of the NDPS Act, 1985.

It may be mentioned that the earlier bail application of the accused petitioner being Bail Appln. No. 1319/2023 was rejected by this Court vide order, dated 22.06.2022.

The scanned copy of the case record is placed before the Court.

The FIR reveals the allegation, *inter-alia*, that on 07.04.2022, at around 11.00 a.m., police, after conducting a surprise naka checking near Ishancherra AD camp recovered and seized 26 grams of suspected heroin from the possession of one Sahid Ahmed who was driving a Sumo vehicle bearing registration No. MZ 04 4803. On the basis of the statement of said Sahid Ahmed two other accused persons, namely Jakir Hussain and Nurul Islam were apprehended and on the basis of information provided by the said two accused persons the present petitioner was arrested. The present petitioner, on being interrogated by police, gave information about one vehicle bearing registration No. AS 02D 5628 driven by one accused namely, Sarif Uddin @Kala which was also seized by police. On being shown by the accused persons 2.285 kg. of suspected heroin was recovered and seized from a secret compartment of the said vehicle. It has been further alleged that accused Jakir Hussain tried to snatch the service rifle of one police personnel, for which, the police, in self defence, had to fire one round at the lower part of his body.

It is noticed that the accused petitioner has been in judicial custody since 09.05.2022, that is, for 396 days.

Perusal of the case record shows that as one of the co-accused persons has been absconding, charge is not yet framed by the learned Court below and no prosecution witness is examined till date although there is a list of 13 (thirteen) prosecution witnesses in the charge-sheet. The present petitioner is the owner of the vehicle wherefrom 2.285 kg. of suspected heroin was recovered and seized by police. The FSL report shows that the seized contraband gave positive tests for heroin.

In the backdrop of facts stated above and in view of the bar contained in Section 37 of the N.D.P.S. Act, this Court is of the opinion that if the liberty of bail is granted to the accused petitioner at the present stage of the case, where charges are yet to be framed by the learned Court below, the trial of the case is likely to be adversely affected.

Accordingly, the bail application stands **rejected**.

This disposes of the bail application.

JUDGE

Comparing Assistant