

GAHC010054252023



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

Case No. : Bail Appln./911/2023

DHARMENDRA PATGIRI
S/O GAJENDRA PATGIRI R/O VILL. UTTAR GANAKGARI P.S. SORBHO
DIST. BARPETA ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY SPL. PP WILDLIFE PROTECTION ACT, 1972

Advocate for the Petitioner : MR. A CHAUDHURY

Advocate for the Respondent : SPL PP WILDLIFE FOREST ASSAM

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN
ORDER

28.03.2023

Heard Mr. A. Choudhury, learned counsel for the accused and Mr. B. Sarma, learned Additional Public Prosecutor for the State respondent.

2. This application, under Section 439 of the Code of Criminal Procedure, 1973, is preferred by accused, namely, Dharmendra Patgiri, who has been

linguishing in jail hazot since 21.01.2023, in connection with the C.R. No. 40/2023, arising out of OR No. HQ/01 of 2023, under Sections 9/39/49B/51 of the Wildlife [Protection] Act, 1972 as amended upto date, for granting bail.

3. The said case has been registered on the basis of one complaint lodged by one Papori Kachari, Forester-I of Manash Tiger Reserve, Barpeta Road on 21.01.2023, to the effect that acting on a tip off, they have conducted search in the house of the accused Dharmendra Patgiri and found him packing some meat in polythene packets and the physical feature of the meat seems to be of deer meat and on being asked, he stated that the meat was of wild deer. Then, she has seized 43 (forty three) numbers of suspected deer meat packets from his possession, preparing seizure list and on the basis of his statement, she has apprehended another accused namely, Jyotish Das.

4. Mr. A. Choudhury, learned counsel for the accused submits that the accused is behind the bar for last 66 days and that one of the co-accused has already been granted the privilege of the pre-arrest bail by this court and another co-accused has already been enlarged on bail by the learned court below. Mr. Choudhury further submits that the offence report has already been submitted after completion of the investigation and as such, there is no question of hampering the investigation or tampering the witnesses and that the accused is ready to face trial, and therefore, it is contended to allow the petition.

5. On the other hand, Mr. B. Sarma, learned Additional Public Prosecutor has vehemently opposed the petition on the ground that a huge quantity of deer meat were recovered from the house premises of the accused. Mr. Sarma further submits that this is the second bail application and the earlier one, being BA No. 354/2023, was rejected by this court vide order dated 03.03.2023, after

considering all the aspects and no fresh ground is assigned for filing this application, and therefore, it is contended to dismiss the petition.

6. Having heard the submissions of learned Advocates of both sides, I have carefully gone through the petition and the documents placed on record and also perused the scanned copy of the record received from the learned court below.

7. It is not in dispute that the investigation of the case has already been completed and the offence report has already been laid before the learned court below and the learned court below has already taken cognizance of the offence under sections 9/29/35[6]/39/44/49[B]/52/57/51[1C] of the Wildlife [Protection] Act and as such, the question of hampering the investigation or tampering the witnesses does not arise. It is also not in dispute that one of the co-accused has already been granted the privilege of pre-arrest bail by this court and another co-accused has been granted the privilege of regular bail by the learned court below. The present accused is behind the bar for last 66 days. Considering the period of detention and also considering the materials available in the scanned copy of the record, especially the voluntary statement of one of the co-accused, namely Jyotish Das, who has already been enlarged on bail by the learned court below, this court is of the view that a prima-facie case for granting bail is made out. And considering the materials on the scanned copy of the record of the learned court below, this court is also of the view that the bar of section 51[b][2][b] of the Wildlife [Protection] Act [Assam Amendment] would not stand in the way of extending the privilege of bail to the accused.

8. Accordingly, considering the aforementioned facts and circumstances and balancing the nature of the charge/allegation with that of the period of

detention, it is provided that on furnishing a bond of Rs. 50,000/- only, with one surety of like amount to the satisfaction of the learned Sessions Judge, Barpeta, the accused be enlarged on bail.

9. In terms of above, this bail application stands disposed of.

JUDGE

Comparing Assistant