

GAHC010058292023



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

Case No. : Bail Appln./1007/2023

SAMIRAN RABHA
S/O- LATE MANIK RABHA, VILL.- BELPARA, P.O. AND P.S. RANGJULI, DIST.
GOALPARA, ASSAM, PIN- 783134.

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

Advocate for the Petitioner : MR. M R KHANDAKAR

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE AJIT BORTHAKUR

ORDER

Date : 10.04.2023

Heard Mr. M. R. Khandakar, learned counsel appearing for the accused petitioner as well as Mr. R. J. Baruah, learned Addl. P.P., Assam appearing for the State respondent.

By this petition under Section 439 Cr.P.C., the accused-petitioner, namely, **Samiran Rabha**, has prayed for grant of bail in connection with **Special (NDPS) Case No. 34/2021 (Rangjuli P.S. Case No.53/2021** under Sections **120B/364(A)/224/511/ 353/34** of the IPC r/w Section **25(1A)** of the Arms Act

and Section **22(c)** of the NDPS Act (G.R. No. 1722/2021).

The scanned copy of the case record along with the case diary, as called for, is placed before the Court.

It is noticed that the accused petitioner has been in judicial custody since 24.08.2021, i.e. for 594 days.

Mr. Khandakar, learned counsel for the accused petitioner, submits that the accused petitioner has been in judicial custody for 594 days despite the fact that out of 12 listed witnesses, 10 prosecution witnesses are examined so far. Mr. Khandakar further submits that the accused being permanent resident of village Belpara under Rangjuli P.S., there is no chance of him jumping the cause of justice if released on bail.

Opposing the bail application, Mr. Baruah, learned Addl. Public Prosecutor, submits that the P.W.s 1 and 4 have clearly implicated the accused petitioners and, as such, in view of the bar under Section 37 of the NDPS Act, the bail application of the accused may not be accepted at the fag end of trial of the case.

The allegation made against the accused petitioner is that he and other two co-accused persons intended to kidnap a businessman from the jurisdiction of Krishnai P.S. and as per secret information; the informant along with his team reached the place and arrested one of the co-accused from his house. According to his statement, search was conducted and during search, the present accused petitioner was arrested and one co-accused escaped from the scene. It is also alleged that during search, one 9 mm pistol with magazine 03 rounds of 9 mm ammunition and around 400 nos. of WY (Yaba) tablets were recovered and seized from the possession of the accused petitioner and another.

It is noticed that the accused petitioner has been in judicial custody since 24.08.2021, i.e., for 594 Days.

A perusal of the case record, *inter-alia*, reveals that charges under Sections 120B/364A/224/353 of the IPC read with Section 25(1-A) of the Arms Act read with Section 22(c) of the NDPS Act were framed against the accused petitioner and two others vide order, dated 15.02.2022.

It is further noticed that there is a list of 12 prosecution witnesses in the charge sheet, out of which 9 witnesses are examined. P.W.9 was examined lastly on 30.08.2022 and, thereafter, no P.W. has appeared for evidence despite the Court issued summons repeatedly. However, the learned Trial Court was not inclined to grant bail apprehending likelihood of absconding.

On scrutiny of the evidence of the P.W.s, it appears that there is sufficient incriminating material against the accused petitioner, subject, of course, to final outcome in trial of the case.

However, having regard to the prolonged detention without any possibility of completion of trial in near future in view of non-service of court process on the remaining P.W.s, vide the order sheet, this Court is of the opinion that despite the bar contained in Section 37 of the NDPS Act, the accused can be released on bail subject to conditions.

Accordingly, it is provided that the accused petitioner, named above, shall be released on bail of **Rs. 50,000/-** with two sureties of like amount to the satisfaction of the **learned Special Judge (NDPS Act), Goalpara** subject to the following conditions-

- i) That the accused petitioner shall continue to appear before the learned trial Court on all dates to be fixed from time to time till the case is disposed of; and
- ii) That the accused petitioner shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the

Court; and

- iii) That the accused petitioner shall refrain from committing any similar offences in future, of which he is suspected of commission.
- iv) That out of the two bailors, one must be a government servant subject to verification of the relevant documents, if deemed necessary and after such verification, the learned Court below shall return the original documents retaining legible scanned copy thereof on record for future reference.

Breach of any of the above conditions of bail shall render cancellation of the bail in accordance with law.

It is further provided that the learned Trial Court shall make an endeavour to dispose of the case expeditiously in accordance with law.

This disposes of the bail application.

JUDGE

Comparing Assistant