

GAHC010059412023



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

Case No. : Bail Appln./1049/2023

MUSSTT AMIRUN NESA AND ANR
W/O MD. SABIR AHMED
R/O VILL- DABOKA PATHAR
WARD NO. 8, P.S. DABOKA
DIST HOJAI, ASSAM

2: MD. ABDUL KARIM
S/O MD. SABIR AHMED
R/O VILL- DABOKA PATHAR
WARD NO. 8
P.S. DABOKA
DIST HOJAI
ASSA

VERSUS

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

Advocate for the Petitioner : MR. S MUNIR

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE AJIT BORTHAKUR

ORDER

10.04.2023

Heard Mr. S. Munir, learned counsel for the petitioners. Also heard Mr. B.

Sarma, learned Addl. Public Prosecutor for the State/respondent.

By this petition under Section 439 Cr.P.C., the petitioners, namely, **1. Musstt. Amirun Nesa and 2. Md. Abdul karim**, have prayed for grant of bail in connection with **N.D.P.S. Case No. 52/2022** u/s **21(c)/29** of the NDPS Act.

The scanned copy of case record, as called for, is placed before this Court.

Mr. S. Munir, learned counsel for the petitioners, submits that the accused petitioners are in judicial custody for 366 days in connection with the case, where only four prosecution witnesses out of eight listed witnesses are examined and it has come in evidence that no contraband was recovered from their direct possession. Mr. Munir submits that considering the statutory requirements provided in Section 37 of the N.D.P.S. Act, for the purpose of rejecting a bail application for possessing commercial quantity of contraband, in the backdrop of facts and attending circumstances as emerged from the evidence on record, the ingredients of the aforesaid provision are being not attracted, as such, subject to any condition, they may be directed to be released on bail.

Opposing the bail application, Mr. B. Sarmah, learned Additional Public Prosecutor submits that both the accused persons are facing trial for commission of the alleged offences under Sections 21(C)/29 of the N.D.P.S. Act for illegally possessing 361 grams of heroin. Mr. Sarmah further submits that F.S.L. report shows that the sample of the seized substance gave positive tests for heroin and that only four prosecution witnesses out of eight listed witnesses are examined so far. Therefore, Mr. Sarmah submits that in view of bar in Section 37 of the N.D.P.S. Act, the bail application may not be accepted at the

present stage of trial of the case.

The case relates to recovery and seizure of 361 grams of heroin from the possession of the accused petitioners.

It is noticed that the accused petitioners have been in judicial custody since 10.04.2022, that is, for 365 days.

A perusal of the case record, *interalia*, reveals that both the accused petitioners are facing trial under Sections 21(C)/29 of the N.D.P.S. Act vide the charges framed on 20.08.2022 for illegally possessing 361 grams of heroin, which amounted to commercial quantity under the said Act.

It further appears that there is a list of eight prosecution witnesses, out of which four were examined till 05.01.2023. On scrutiny of the evidence of the prosecution witnesses so far examined in the case, it cannot conclusively be said that the accused petitioners were not guilty of the charges. Therefore, this Court is of the opinion that in view of the bar contained in Section 37 of the N.D.P.S. Act, the bail application of the accused petitioner cannot be accepted at the present stage of trial of the case.

Accordingly, the bail application stands rejected.

However, the accused petitioners shall have liberty to file appropriate bail application before the learned court below at an appropriate stage of trial of the case and if such bail application is filed, the same shall be considered by the learned trial court and disposed of in accordance with law.

Be it mentioned that no observation made in this bail order shall have any bearing in the independent judicial discretion of the learned court below.

This disposes of the bail application.

JUDGE

Comparing Assistant