

GAHC010059432023



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

**Case No. : Bail Appln./1031/2023**

DILWAR @ MD DILWAR  
S/O- SEIKH TASLIM, R/O- HARUCHOWK, P.S. KALIACHOWK, DIST.-  
MALDA, (WEST BENGAL)

VERSUS

THE STATE OF ASSAM  
REP. BY P.P., ASSAM

**Advocate for the Petitioner : MS. S K NARGIS**

**Advocate for the Respondent : PP, ASSAM**

**BEFORE**  
**HONOURABLE MR. JUSTICE AJIT BORTHAKUR**

**ORDER**

**Date : 11.04.2023**

Heard Ms. SK Nargis, learned counsel for the accused petitioner as well as Mr. RJ Baruah, learned Additional Public Prosecutor, Assam for the State respondent.

By this petition under Section 439 Cr.P.C., the accused-petitioner, namely, **Dilwar @ Md. Dilwar** has prayed for grant of bail in connection with **NDPS Case No.95/2022 ( Garchuk PS Case No. 800/2022)** under Section 21 ©/29 of NDPS Act.

Scanned copy of case records is received.

Ms. SK Nargis, learned counsel for the accused petitioner, submits that the accused has been languishing in judicial custody for 492 days despite being innocent. Ms. Nargis further submits that the accused has been charged with illegally possessing 2.56 Kg of heroin and in the case, after framing of charges, the learned trial court has examined 06 (six) prosecution witnesses out of 07(seven) listed witnesses. Therefore, Ms. Nargis submits that further continuation of his detention may not be warranted for the purpose of examination of the remaining 01(one) prosecution witness.

Opposing the bail application, Mr. RJ Baruah, learned Additional Public Prosecutor, submits that the accused has been tried for possessing commercial quantity of heroin weighing 2.56 Kg and as such, at the present stage end of trial, the bail application of the accused, who is resident of West Bengal may not be accepted.

The case relates to recovery and seizure of 2.56 kgs of heroin from the present accused petitioner and from one Dalim Sheikh which was kept inside the truck bearing registration No. WB-65 C-2150 coming from Upper Assam.

It is noticed that the accused petitioner is in judicial custody for 492 days since 06.12.2021.

On perusal of case record, it is revealed that charges under Sections 21 ( C ) /29 of the NDPS Act was framed vide order, dated 28.07.2022. There is a list of 08(eight) prosecution witnesses and out of them 06(six) witnesses are examined.

The evidence on record shows that the accused has been well recognised by the witnesses as the perpetrator of the crime. Therefore, it cannot be said at the present stage that the accused is not guilty of the charges subject, however, to final outcome in investigation.

In view of above reasons and bar in granting bail involving commercial quantity under Section 37 of the NDPS Act, the accused is not entitled to be released on bail at the present stage of trial of the case which is nearing completion.

Accordingly, the bail application stands rejected.

It is, however, provided that the learned trial court shall make an endeavour for early disposal of the case avoiding unnecessary adjournments.

This disposes of the bail application.

**JUDGE**

**Comparing Assistant**