

GAHC010060232023



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

Case No. : Bail Appln./1058/2023

KAMAL ALI AND ANR
S/O JAHAR ALI
VILL- JHAWKURA PT.I
P.S. JOGIGHOPA
P.O. MAJERALGA
DIST. BONGAIGAON, ASSAM
PIN-783388

2: SAIFUL ISLAM
S/O HAFIZUR RAHMAN
VILL- JHAWKURA PT.II
P.S. JOGIGHOPA
P.O. MAJERALGA
DIST. BONGAIGAON
ASSAM
PIN-78338

VERSUS

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

Advocate for the Petitioner : MR H R A CHOUDHURY

Advocate for the Respondent : PP, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE AJIT BORTHAKUR**

ORDER

Date : 10.04.2023

Heard Mr. HRA Choudhury, learned Senior Counsel for the accused petitioners as well as Mr. B Sharma, learned Additional Public Prosecutor, Assam for the State respondent.

By this petition under Section 439 Cr.P.C., the accused-petitioners, namely, **1. Kamal Ali** and **2. Saiful Islam** have prayed for grant of bail in connection with **Special (NDPS) Case No. 26/2021** arising out of **Chapar P.S. Case No.323/2021** (GR No.1044/2021) under Sections 22 (C)/29 of the NDPS Act.

Mr. HRA Choudhury, learned Senior Counsel for the accused petitioners, submits that the accused petitioner No. 1 is in judicial custody for 642 days and accused petitioner No. 2 644 days and out of 6 prosecution witnesses only 04 are examined till date. Mr. Choudhury further submits that one co-accused namely, Ibrahim Ali has already been enlarged on bail by a co-ordinate bench. Mr. Choudhury, therefore, submits that the accused petitioners may be directed to be released on bail. In this regard, Mr. Choudhury , learned Senior Counsel has relied on the principles adopted by the Hon'ble Supreme Court in the case of *Nitish Adhikary @ Bapan –vs- The State of West Bengal* in Special Leave to Appeal (Crl.) No(s). 5769/2022 and in *Amit Singh Moni –vs- State of Himachal Pradesh* in Criminal Appeal No.668/2020 arising out of SLP (Criminal) No. 3813/2020

Per contra, Mr. B Sharma, learned Additional Public Prosecutor, submits that the accused petitioners are facing trial for commission of the alleged offences under Sections 22 (C)/29 of the NDPS Act for illegally possessing 7921 bottles of codeine phosphate based cough syrup and the FSL report tested positive and further, only 2 prosecution witnesses are remained to be examined. As such, Mr. Sharma submits that the bail application may not be considered favourably.

The case relates to recovery and seizure of 7920 numbers of New Phensedyl cough syrup bottle (100 ml. each bottle) containing Codeine phosphate from the possession of the present

accused petitioners and one Ibrahim Ali.

It is noticed that the accused petitioner No. 1 is in judicial custody for 642 days since 08.07.2021 and accused petitioner No. 2 for 644 days since 06.07.2021.

A perusal of the case record reveals that charges under Sections 22 (C)/29 of the NDPS Act were framed against the accused petitioners vide order, dated 05.01.2022. Thereafter, four prosecution witnesses out of listed six witnesses are examined till 10.10.2022 and fixed for evidence of the investigating officer.

It is also revealed that one co-accused namely, Ibrahim Ali was released on bail by a co-ordinate bench vide order, dated 09.01.2023 passed in Bail Application 3371/2021.

Therefore, despite the reasonable restrictions provided in Section 37 of the NDPS Act but in view of the prolonged period of detention and as the trial of the case has substantially progressed and further, the principle followed in the orders referred to above, this Court is of the opinion that further continuation of detention of the accused petitioners may not be necessary for the purpose of remaining part of trial.

Accordingly, it is provided that **each** of the accused petitioners, who are resident under **Jogighopa PS** shall be released on furnishing bail of **Rs. 1, 00,000/- (One Lakh)** only with one surety of like amount to the satisfaction of the learned **Special Judge (NDPS Act), Bilasipara** subject to the following conditions- :

- i) That the accused petitioners 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;
- ii) That the accused petitioners shall not directly or indirectly make any inducement, threat or promise to any of the remaining prosecution witnesses; and
- iii) That the accused petitioners shall refrain from committing any similar offences in future, of which they are accused of commission.

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

This order will not be treated as precedent for other cases.

This disposes of the bail application.

JUDGE

Comparing Assistant