

GAHC010061892023



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

Case No. : Bail Appln./1122/2023

DEEPAK @ DIPU SRIVASTAV AND ANR
S/O LATE JOGENDRA SRIVASTAV
VILL- KACHHIKOTA, P.S. BIHPURIA
DIST. LAKHIMPUR, ASSAM

2: RAJU @ BABATU DEWRI
S/O SRI DURGA DEURI
VILL- KINAPATHAR
P.S. NARAYANPUR
DIST. LAKHIMPUR
ASSA

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR G PHUKAN

Advocate for the Respondent : PP, ASSAM

BEFORE
HON'BLE MR. JUSTICE ROBIN PHUKAN
ORDER

25.04.2023.

Heard Mr. G Phukan, learned counsel for the accused and also heard Mr. B.

Sharma, learned Addl. P.P., Assam appearing for the State respondent.

2. This application under Section 439 of the Code of Criminal Procedure, 1973, is preferred by accused, namely, Deepak @ Dipu Srivastav and Raju @ Babatu, who have been languishing in jail hazot, in connection with the Laluk P.S. Case No.195/2022, corresponding to (Special NDPS Case No.03/2023), under sections 20(b)(ii)(C)/29 of the NDPS Act, since 07.10.2022, for granting bail.

3. The said case has been registered on the basis of an FIR, lodged by SI Naziruddin Khan, of Laluk PS on 06.10.2022, to the effect that on the same day, at about 02:35 P.M., acting on a tip off, he conducted Naka Checking at Laluk Bihpuria Road, near Laluk Market and intercepted a vehicle, bearing Regn. No.SK-08P-0727, which was coming from Narayanpur towards Lakhimpur and found two persons namely, Deepak Srivastav and Raju Dewri and on conducting search of the vehicle, he recovered 37.776 kgs of Ganja and seized the same preparing seizure list.

4. Upon the said FIR, the Officer-in-Charge of Laluk Police Station registered Laluk P.S. Case No.195/2022, under section 20(b)(ii)(C)/29 of the NDPS Act and investigated the same and during investigation, the I.O. has arrested the accused persons and forwarded them to the Court. Then on completion of investigation the I.O. laid charge sheet against the present accused persons, along with another accused, to stand trial in the court under sections 20(b)(ii)(C)/29 of the NDPS Act.

5. Mr. G. Phukan, the learned counsel for the accused submits that the accused were arrested on 06.10.2022, and since then, they has been languishing in jail hajot. Mr. Phukan further submits that the accused have no antecedent of criminal activities and that accused Deepak Srivastava was working as foreman with Narayan Engineering Co. Ltd. at Urja Hydroelectric project, at Sikkim and

that they are ready to face trial and that there is no chance of absconding. Mr. Phukan further submits that one Birinchi Dewri was the owner of the seized articles and he has also been arrested. It is the further submission of Mr. Phukan that since charge sheet has already been submitted there is no scope of interfering with the investigation and therefore, it is contended to allow the accused persons to go on bail.

6. On the other hand, Mr. B. Sharma, the learned Addl. P.P., Assam has vehemently opposed the petition on the ground that there are sufficient materials to show complicity of both the accused with the offence alleged. Mr. Sharma further submits that the contraband substances recovered from their possession are of commercial quantity and the embargo under Section 37 of the NDPS Act is applicable in the present case and the accused have failed to satisfy the requirements and therefore, it is contended to dismiss the petition.

7. 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 record, received from the learned Court below.

8. It appears that the accused has been charge sheeted under sections 20(b)(ii) (C)/29 of the NDPS Act. It also appears from the record of the learned court below that total 37.776 kg of Ganja were recovered and seized from the possession of the accused person. Indisputably, the contraband substances, so recovered from the possession of the accused persons, are of commercial quantity. And as such the embargo, under section 37 of the NDPS Act will be applicable herein this case.

9. While an endeavour has been made to find out the availability of reasonable

ground for believing that the accused are not guilty of the offences in which they have been charge sheeted, by examining the materials on the record of the learned court below, for the limited purpose of releasing them on bail, and to ascertain that they are unlikely to commit an offence under the Act, while on bail, this Court is unable to derive it's satisfaction that there exist any reasonable ground to show that the accused are not guilty of the offence and that they are unlikely to commit such offence while on bail.

10. There is also no dispute that the accused have been arrested on 07.10.2022, and since then they have been languishing in jail hajoot. But, in view of a decision of Hon'ble Supreme Court, in **NCB vs. Mohit Agarwal**, reported in **[2022] 0 Supreme (SC) 619**, the length of period of his custody or the fact that the charge sheet has been filed and the trial has commenced are by themselves are not consideration that can be treated as persuasive ground for granting relief to the accused under section 37 of the NDPS Act. This being the position, the submission of Mr. Phukan the learned counsel for the accused, in respect of the period of detention as the ground for releasing the accused on bail, is devoid of any substance. It is well settled by Hon'ble Supreme Court in the case of **Mohit Agarwal** (supra) that liberal approach in the matter of bail under the NDPS Act is indeed uncalled for.

11. This is a second bail application, the earlier petitions, being BA No(s). 3065/2022 and 3028/2022, were rejected vide order dated 20.01.2023. Though, no fresh ground is assigned by the accused persons for filing the second application, yet, submission of charge sheet after completion of investigation may be a fresh ground for approaching this court again. But, in view of the embargo, under Section 37 of the NDPS Act, this Court is left unimpressed by the submission of the learned counsel for the accused that this is a fit case for

granting bail.

12. Accordingly, having considered above and also considering the nature and gravity of the offence and the punishment prescribed for the same and also the possibility of misusing the liberty if enlarged on bail, the instant petition stands dismissed. However, the learned court below is directed to expedite the trial and complete the same within the earliest possible time, without being influenced by any of the observation made herein above, as the same is made only for the purpose of disposing of this bail application, not on the merit of the case. If necessary, the learned court below shall take recourse to the provision of section 309(1) Cr.P.C.

JUDGE

Comparing Assistant