

GAHC010072452023



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

**Case No. : Bail Appln./1235/2023**

KHETAJA BIBI @ KHUDEJA BIBI  
D/O- LATE ABDUL ALI, R/O- VILL- MAJGUMI, P.S. CHHAYGAON, DIST.-  
KAMRUP, ASSAM

VERSUS

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

**Advocate for the Petitioner : MR. A R KHAN**

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

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

**ORDER**

**Date : 19.05.2023**

Heard Mr. A. M. Khan, learned counsel appearing for the accused petitioner as well as Mr. B. Sarma, learned Addl. P.P., Assam appearing for the State respondent.

By this petition under Section 439 Cr.P.C., the accused-petitioner, namely, **Khetaja Bibi @ Khudeja Bibi**, has prayed for grant of bail in connection with **NDPS Case No. 28/2022** under Sections **22(C)/29** of the NDPS Act.

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

Mr. A.M. Khan, learned counsel for the accused petitioner, submits that the

accused has been in jail custody for 448 days in connection with the instant charge sheeted case, where the learned Trial Court has already examined four prosecution witnesses out of six listed witnesses. Mr. Khan further submits that the accused girl is aged about 19 years and works in a tea stall without any criminal antecedence. Therefore, Mr. Khan submits that she may be directed to be released on bail subject to any condition.

Per contra, Mr. B. Sarma, learned Addl. Public Prosecutor submits that the charge against the accused is under Section 22(c) of the NDPS Act for illegally possessing 355 bottles of codeine phosphate based cough syrup, which amounted to commercial quantity. Mr. Sarma, therefore, submits that in view of the bar under Section 37 of the NDPS Act and at the present stage of trial of the case, the liberty of bail if granted may likely to affect early disposal of the case.

The case relates to recovery and seizure of 355 bottles of codeine phosphate based cough syrup from the possession of the accused petitioner.

It is noticed that the accused lady, aged about 19 years, has been in judicial custody since 11.01.2022, i.e. for 448 days.

A perusal of the case record reveals that a charge under Section 22(c) of the NDPS Act has been framed against the accused, vide order, dated 30.07.2022. Thereafter, the learned Trial Court has examined four prosecution witnesses out of six charge-sheeted listed witnesses till 20.01.2023.

The accused lady is a permanent resident under Chaygoan P.S., Assam and as such, there is no chance of her running away from the remaining part of trial of the case.

Therefore, this Court is of the opinion that despite the bar under Section 37 of the NDPS Act, she may be released on bail.

Accordingly, it is provided that the accused petitioner, named above, shall be

released on bail of **Rs. 1,00,000/-** with two sureties of like amount to the satisfaction of the **learned Special Judge (NDPS Act), Kamrup at Amingaon** 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 she is suspected of commission; and
- iv) That out of the two sureties, 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.

Any breach of the above conditions shall render cancellation of the bail in accordance with law.

This disposes of the bail application.

**JUDGE**

**Comparing Assistant**