

GAHC010073682023



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

Case No. : Bail Appln./1284/2023

GIHUKA HOKIYE
S/O SRI HOKIYE
R/O MIDDLE COLONY, PURANA BAZAR, P.S. EAST, DIST. DIMAPUR,
NAGALAND,
PIN-797116

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. N K MURRY

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE AJIT BORTHAKUR

ORDER

Date : 09.05.2023

Heard Mr. NK Murry, learned Counsel for the accused petitioner as well as Mr. B Sarma learned Addl. P.P., Assam for the State respondent.

By this petition under Section 439 Cr.P.C., the accused-petitioner, namely, **Gihuka Hokiye**, has prayed for grant of bail in connection with **Dillai PS Case No. 21/2022 (GR NO.**

168/2022) u/Section under Section 22 © of the NDPS Act.

Scanned copy of case records is received.

Mr. NK Murry, learned Counsel for the accused petitioner, submits that the accused has been in judicial custody for 289 days despite being innocent, but not a single witness out of seven listed witnesses is examined till date. Therefore, relying on the ratio of the judgment rendered by the Hon'ble Supreme Court in *Mohd. Muslim @ Hussain –vs- State (NCT of Delhi)*, reported in 2023 LiveLaw (SC) 260, Mr. Murry submits that subject to any condition, the accused petitioner may be directed to be released on bail.

Opposing the bail application, Mr. B Sarmah, learned Additional Public Prosecutor, submits that the case record reveals that 1.790 Kg of Methamphetamine tablets was seized from the possession of the accused and accordingly, a charge under Section 22 © of the NDPS Act was framed on 29.11.2022 and thus, presently pending in evidence stage. Mr. Sarmah, therefore, submits that in view of the bar in Section 37 of the NDPS Act, the liberty of bail may not be granted in favour of the accused petitioner.

The prosecution case in brief is that on 25.07.2022, the informant and his staff during a Naka checking recovered and seized 17,200 nos. of suspected YABA tablets from the scooty of the present accused petitioner who was coming from Dimapur to Manja via Khatkhathi.

A perusal of the case record reveals that the accused has been in judicial custody since 26.07.2022 and the charge sheet was submitted on 09.11.2022. A charge under Section 22 (C) of the NDPS Act was framed against the accused on 29.11.2022. Thereafter, although eleven dates were fixed for evidence till 11.04.2023, none of the seven listed witnesses appeared for deposition although summons were regularly issued.

It may be pointed out that as held in *Md. Muslim (supra)* grant of bail on the ground of unreasonable delay in trial is not fettered by Section 37 of the NDPS Act.

The matter involves illegal possession of commercial quantity of Methamphetamine drugs.

In view of the above circumstances as emerged from the case record and keeping in mind the bar in Section 37 of the NDPS Act, the bail application at the present stage of trial cannot be considered in favour of the accused petitioner.

Accordingly, the bail application stands rejected at the present stage of trial of the case.

The learned trial court is, however, directed to examine the material witnesses at the earliest preferably within a maximum period of six months from the date of this order. If the material witnesses are not examined before expiry of the aforesaid maximum period of six months, the accused petitioner's bail application, if filed afresh may be considered by the learned trial court subject to stringent conditions as deemed proper to ensure his attendance during the course of trial of the case.

Accordingly, the bail application stands disposed of.

JUDGE

Comparing Assistant