

GAHC010090612023



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

Case No. : Bail Appln./1537/2023

ANKU DEKA AND ANR
S/O LATE PARESH DEKA
R/O NEAR SHIBA MANDIR
SHANTINAGAR, FOREST GATE
P.S. NOONMATI
DIST. KAMRU (METRO), ASSAM
PIN-781026

2: BIPUL DEY
S/O LATE KHITISH DEY
R/O LALA BASTI
NARENGI RAIL LINE

P.S. NOONMATI
DIST. KAMRUP (METRO)
ASSAM
PIN-78102

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR S CHAUHAN

Advocate for the Respondent : PP, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA**

ORDER

18.05.2023

In this case, two learned counsel have appeared, Mr. K. Kalita, learned counsel is appearing for petitioner no. 1 and Mr. D. Chutia, learned counsel appears for both the petitioners. It has been stated at the Bar that insofar as the petitioner no.1 is concerned, he has obtained an NOC from the earlier counsel and has engaged Mr. K. Kalita to appear for him.

2. Nonetheless, as Rule 68 of Chapter 5A of the Gauhati High Court Rules has not been complied with, filing of fresh vakalatnama in respect of petitioner no. 1 is not taken into consideration. Although the Court has heard both the learned counsel, cognizance has been taken in respect of the learned counsel filing the first vakalatnama.

3. The petitioners who were arrested on 17.03.2023 in connection with Noonmati P.S. Case No. 88 /2023 under sections 20(b)/27(A) of NDPS Act has prayed for regular bail under Section 439 Cr.P.C.

4. Mr. R.J. Baruah, learned APP has produced the Case Diary and has opposed the prayer for bail on the ground that there are sufficient incriminating materials against the petitioners.

5. On perusal of the Case Diary, although there are sufficient materials against the petitioners involved in the trafficking of contraband ganja, but the investigation carried out so far does not inspire the confidential report insofar as offence under Section 27A is concerned. Nonetheless, it is merely a passing remark and should not be construed to be a finding of fact and shall not prejudice the trial.

6. The Case Diary reveals that on 16.03.2023, the Police personnel while conducting search on the basis of an information received, arrested the petitioner no. 1 carrying 4.9 kgs of cannabis (ganja) and seized the same. Thereafter, during interrogation, the petitioner no. 1 revealed that he carried the suspected ganja consignment to deliver to petitioner no. 2. Accordingly, the police personnel searched the house of petitioner no.2 and recovered 24 small packets of suspected narcotic drugs, i.e.,cannabis (ganja) weighing 180 gms.

7. As already indicated above, *prima facie* the ingredients of Section 27 A of the NDPS Act could not be called out, the Court is of the considered opinion that the rigours of section 37 of the NDPS Act could not apply in this case.

8. As the petitioners have already spent 62 days in custody, the Court is of the considered opinion that further custodial interrogation of the petitioners may not be required. Accordingly, the Court is inclined to grant bail to the petitioners, namely (1) Anku Deka and (2) Bipul Dey on furnishing bail bond of Rs. 1,00,000/- (Rupees One lakh) each with two solvent sureties of like amount to the satisfaction of the learned Special Judge , Kamrup (M), Guwahati.

9. Bail is granted on the following conditions:

- (i) The petitioners shall make themselves available to the police or any other investigating agency or Court as and when required.
- (ii) The petitioners 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 them from disclosing such facts to Court or to any police officer or tamper with the evidence. They shall not, in any manner, try to overawe or influence or intimidate the prosecution witness.
- (iii) The petitioners shall not obstruct the smooth progress of the investigation/trial.
- (iv) The petitioners shall not misuse their liberty in any manner.
- (v) The petitioners shall appear before the I/O within 15 (fifteen) days from the date of their release and they shall continue to appear once a month thereafter till their personal appearance is dispensed with or charge-sheet is filed, whichever is earlier.

10. Bail Application stands disposed of.

11. Case Diary is returned.

JUDGE

Comparing Assistant