

GAHC010096312023



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

Case No. : Bail Appln./1615/2023

JAKIR HUSSAIN
S/O RAHAMAT ALI
R/O DHOLGRAM
P.S. RATABARI
DIST. KARIMGANJ, ASSAM
PIN-788710

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. S C BISWAS

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE AJIT BORTHAKUR

ORDER

28.06.2023

Heard Mr. S. C. Biswas, learned counsel for the petitioner. Also heard Mr. R. J. Baruah, learned Addl. Public Prosecutor for the State/respondent.

By this petition under Section 439 Cr.P.C., the petitioner, namely,

Jakir Hussain, has prayed for grant of bail in connection with **Patharkandi P.S. Case No. 712/2021 u/s 22(C)/29 of the NDPS Act (corresponding to G.R. Case No. 3596/2021)**.

The scanned copy of case record along with case diary, as called for, is placed before this Court.

Mr. S. C. Biswas, learned counsel for the accused petitioner, submits that the accused has been in judicial custody for 517 days despite being absolutely innocent. Mr. Biswas further submits that narcotic drug weighting 930 grams including container was recovered from the house of his absconding co-accused Dilwar Hussain. It has been submitted that presently the accused is sick and therefore, for advanced treatment, he may be directed to be released on bail.

Opposing the bail application Mr. R. J. Baruah, learned Additional Public Prosecutor, submits that the charges were framed recently against the present accused and another and the case is fixed for hearing. Therefore, Mr. Baruah submits that in view of abundance of incriminating material under Section 29 on the case diary and bar contained in Section 37 of the N.D.P.S. Act, the bail application of the accused may not be considered favorably.

The case relates to recovery and seizure of 930 grams of narcotic drug including container from the house of one Dilwar Hussain.

It is noticed that the accused petitioner has been in judicial custody since 28.01.2022, that is, 517 days.

A perusal of the case record reveals that charges were framed against the present accused and another vide order, dated 01.06.2023. In

order to expedite trial of the case against the accused persons, the case was split up issuing necessary process against the absconding accused Dilwar Hussain vide order, dated 28.02.2023. The case is presently pending for evidence of the listed nine prosecution witnesses for which the learned trial court has been issuing summons.

Perusal of the case diary reveals sufficient prima facie implicating materials against the accused petitioner and as such, this Court is of the opinion that if the liberty of bail is granted to the accused at the present stage of trial of the case, there is every chance of him either influencing the witnesses or repeating commission of similar offences.

Therefore, in view of the bar contained in Section 37 of the N.D.P.S. Act, the accused cannot be released on bail.

Accordingly, the bail application stands rejected.

However, keeping in mind the ratio of the decisions rendered by the Hon'ble Supreme Court in *Mohd Muslim @ Hussain Vs. State (N.C.T. of Delhi)*, reported in *2023 SCC Online SC 352* and *Shariful Islam @ Sarif vs The State of West Bengal in Special Leave to Appeal (Crl.) No. 4173/2022*, it is provided that the learned trial court shall make endeavor to dispose of the case at the earliest time possible.

This disposes of the bail application.

JUDGE

Comparing Assistant