

GAHC010096942023



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

Case No. : Bail Appln./1695/2023

MD NASHED AND ANR
S/O LT. JANIF AHMED R/O VILL. DINGHARPUR P..S MERATHAN DIST.
MURADABAD UTTAR PRADESH

2: MD. MOGISH
S/O LT. JAHID HUSSAIN R/O VILL. DINGHARPUR P..S MERATHAN DIST.
MURADABAD UTTAR PRADESH

VERSUS

THE STATE OF ASSAM
REP, PP, ASSAM

Advocate for the Petitioner : MR. P K R CHOUDHURY

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE AJIT BORTHAKUR

ORDER

26.06.2023

Heard Mr. P.K. Roy Choudhury, learned counsel for the accused petitioners.
Also heard Mr. B.B. Gogoi, learned Addl. P.P., Assam appearing for the State respondent.

By this petition under Section 439 Cr.P.C., the accused/petitioners, namely **1) Md. Nashed and 2) Md. Mogish** have prayed for grant of bail in connection with **Garchuk P.S. Case No.219/2022** corresponding to **NDPS Case No.221/2022** under Sections **22(1)/29** of the N.D.P.S. Act, 1985.

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

The first bail application of the accused petitioners being Bail Appln. No.418/2023 was rejected by this Court vide order, dated 23.03.2023.

Mr. P.K. Roy Choudhury, learned counsel for the accused petitioners, submits that both the accused persons have been languishing in judicial custody for about 11(eleven) months despite being innocent. Mr. Roy Choudhury further submits that the accused petitioners were the driver and handyman respectively of the vehicle transporting the seized cartons containing the cough syrup bottles knowing only that those cartons contained soaps. Mr. Roy Choudhury, learned counsel, submits that they were transporting the seized medicines as per Tax Invoice vide Annexure-H, E-Way Bill and other documents, but through inadvertence those documents could not be produced on demand by the police while intercepting the vehicle transporting the seized medicines. Therefore, Mr. Roy Choudhury submits that the accused petitioners did not commit any illegality as alleged and they wish to produce those documents before the appropriate authority, if released on liberty of bail.

Per contra, Mr. B.B. Gogoi, learned Addl. Public Prosecutor, submits that the learned trial Court, after perusal of the records, having found prima facie material, framed charges against the accused petitioners under Sections 22(c)/29 of the N.D.P.S. Act on 25.01.2023 and thereafter, no prosecution witness is examined in the case. Therefore, Mr. Gogoi submits that in addition

thereof, in view of the bar under Section 37 of the N.D.P.S. Act, the bail application may not be considered favourably.

The case relates to recovery and seizure of 20,016 bottles of ANREX-CP Chlorpheniramine Maleate & Codeine Phosphate Cough Syrup bottles while transporting in a truck bearing registration No. UP 21 BN 8713 driven by the accused petitioners, who were driver and handyman respectively of the said truck without any document.

It is noticed that the accused petitioners have been in judicial custody since 19.07.2022, that is, for 343 days and they were remanded in police custody for 3(three) days.

A perusal of the case record reveals that after receipt of the charge-sheet on 06.10.2022, the learned trial Court of Additional Sessions Judge, F.T.C. No. 3-cum-Special Judge, Kamrup(M), Guwahati having found prima facie material framed charges under Sections 22(c)/29 of the N.D.P.S. Act against both the accused persons vide order, dated 25.01.2023. Thereafter, the prosecution is yet to examine the witnesses although the summons are seen regularly issued to the witnesses. There is no indication that the seized contraband was recovered in sealed condition of the consignor and that necessary documents in support of legal transportation of those materials were produced on demand of intercepting police or produced immediately after arrest of the accused petitioners. Therefore, in view of the bar in granting bail to accused in matters involving commercial quantity of drugs under Section 37 of the N.D.P.S. Act, the accused petitioners are not entitled to be released on bail at the present stage of trial of the case.

Accordingly, the bail application of the accused petitioners stands

rejected.

However, it is provided that the accused petitioners shall be at liberty to file fresh bail application before the learned Court below at an appropriate stage of trial of the case and if such bail application is filed, the same shall be considered and disposed of in accordance with law.

The learned trial Court shall make an endeavour to expedite trial of the case so as to ensure speedy justice to both the parties, if deemed necessary fixing a calendar of hearing.

With the above directions, the bail application stands disposed of.

JUDGE

Comparing Assistant