

GAHC010096982023



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

Case No. : Bail Appln./1595/2023

HAFIZUR RAHMAN AND 2 ORS
S/O AFSHAR ALI AHMED
R/O VILL- BORTARI
P.S. DHUPDHARA
DIST. GOALPARA, ASSAM

2: MUZZAMEL HOQUE
S/O TOFIS ALI
R/O VILL- BORTARI
P.S. DHUPDHARA
DIST. GOALPARA
ASSAM

3: JAKIR HUSSAIN
S/O LATE SHONGSER ALI
R/O VILL- MOHITARI
P.S. CHHAYGAON
DIST. KAMRUP
ASSA

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. Y S MANNAN

Advocate for the Respondent : PP, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE AJIT BORTHAKUR**

ORDER

02.06.2023

Heard Mr. Y.S. Mannan, learned counsel for the accused petitioners as well as Mr. R.J. Baruah, learned Addl. P.P., Assam appearing for the State respondent.

By this petition under Section 439 Cr.P.C., the accused/petitioners, namely **1) Hafizur Rahman 2) Muzzamel Hoque and 3) Jakir Hussain** have prayed for grant of bail in connection with **Special NDPS Case No.42/2022** pending in the Court of learned Addl. Sessions Judge, Amingaon arising out of Chhaygaon P.S. Case No.291/2022 under Sections **21(c)/29** of the NDPS Act.

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

The case relates to recovery and seizure of 304 grams of heroin from the possession of the accused petitioners.

It is noticed that the accused petitioners have been in judicial custody since 17.04.2022, that is, for 412 days (1 year 1 month 17 days).

A perusal of the case record reveals that after completion of investigation police submitted the charge sheet on 18.07.2022 against all the accused petitioners. There is a list of 6(six) prosecution witnesses in the charge sheet and out of them 3(three) witnesses including 2(two) independent seizure witnesses have been examined. The accused persons are permanent residents of Dhupdhara and Chhaygaon, Assam. It is, therefore, noticed that substantial number of prosecution witnesses are examined in the case and as such, this Court finds that further continuation of detention of the accused petitioners in

the interest of the remaining part of trial is not required as there is no possibility of them fleeing from the course of justice.

Having heard the learned counsel of both the sides and scrutiny of the evidence so far recorded in the case and further, the length of detention, this Court is of the considered opinion that despite the bar contained in Section 37 of the NDPS Act in granting bail in the matter involving commercial quantity of drugs, the accused petitioners may be granted the liberty of bail subject to stringent conditions.

Accordingly, it is provided that **each** of the accused petitioners, named above, shall be released on bail of **Rs.1,00,000/- (Rupees One Lakh)** only 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 petitioners 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;
- ii) That the accused petitioners shall not directly or indirectly make any inducement, threat or promise to any of the remaining prosecution witness who are acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court;
- iii) That the accused petitioners shall refrain from committing any similar offences in future of which they are accused of commission; and
- iv) That one of the two sureties must be a government servant subject to verification of the relevant documents and the learned Court below shall return the aforesaid documents after such

verification retaining legible scanned copy thereof on record.

Be it mentioned that no observation made in course of this bail order shall have any bearing in the judicial discretion of the learned trial Court.

This disposes of the bail application.

JUDGE

Comparing Assistant