

GAHC010097822023



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

Case No. : Bail Appln./1633/2023

SUMIT DHAR
S/O LATE KIRANMOY DHAR
R/O SHIV BARI ROAD,
KARIMGANJ TOWN,
P.O. AND P.S. KARIMGANJ,
DIST. KARIMGANJ, ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. S BISWAS

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE AJIT BORTHAKUR

ORDER

Date : 08.06.2023

Heard Mr. S Biswas, learned for Counsel for the accused petitioner as well as Mr. B Sharma, learned Additional Public Prosecutor, Assam for the State respondent.

By this petition under Section 439 Cr.P.C., the accused-petitioner, namely, **Sumit Dhar** has

prayed for grant of bail in connection with **NDPS Case No. 166/2022** arising out of Basistha PS Case No. 1023/2021 under Section 21©/29 of the NDPS Act.

The scanned copy of case records is received.

Mr. S Biswas, learned Counsel for the accused petitioner, submits that the accused has been languishing in jail for 375 days since he was arrested on 29.05.2022 after one year of commission of the alleged offences on 09.06.2021. Mr. Biswas further submits that no incriminating contraband was recovered and seized from the possession of the accused, who is a registered drug distributor dealing in selling, stacking of drugs. Mr. Biswas submits that the accused petitioner was arrested on the basis of a deed of authorisation executed between Anup Kumar Ghosh, the Proprietor of M/S Nalini Drug Distributor and the petitioner on 21.12.2020, which was found in the house of one Amal Dey, the co-accused, who is running the business of drug distributor in the name and style of M/S Hematech Pharmaceuticals and two blank cheques under his signature. Therefore, Mr. Biswas submits that the accused petitioner was not even remotely concerned with the alleged offence under the NDPS Act.

Opposing the bail application, Mr. RJ Baruah, learned Additional Public Prosecutor, submits that the case involves illegal possession of commercial quantity of 44, 160 bottles of codeine phosphate based cough syrup and as such, in view of the bar in Section 37 of the NDPS Act, the bail application may not be considered favourably. Also Mr. Boruah submits that the charges were framed recently and no prosecution witness is examined till date.

The case relates to recovery of 44, 160 bottles of codeine phosphate based cough syrup bottles (100 ml each bottle) from a vehicle which was coming from Khanapara towards Jorabat.

It is noticed that the accused petitioner is in judicial custody for 375 days since 29.05.2022.

A perusal of the case record reveals that charges under Sections 22 (c) /29 of the NDPS Act were framed against the accused petitioner and two others vide order, dated 27.03.2022.

Thereafter, no prosecution witness is examined. Presently, the case is pending, *interalia*, for further hearing on a petition filed by co-accused seeking direction to the investigating officer to produce samples of seized material for sending the same to the Central Drugs Laboratory and the next date is fixed on 12.06.2023.

In the aforesaid backdrop of facts and stage of trial of the case as well as in view of the bar contained in Section 37 of the NDPS Act in granting bail in the matters involving commercial quantity of drugs, this court is of the opinion that the liberty of bail to the accused petitioner cannot be granted merely on the ground of length of detention.

Accordingly, the bail application stands rejected.

It is however, provided that the accused petitioner shall have liberty to file bail application at an appropriate stage of trial of the case and if such bail application is filed, the same shall be disposed of in accordance with law.

It is further provided that the learned trial Court shall make an endeavor to expedite trial of the case by maintaining calendar of hearing.

This disposes of the bail application.

JUDGE

Comparing Assistant