

GAHC010108742023



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

Case No. : Bail Appln./2140/2023

SIRAJ UL ISLAM @ SIRAJUL ISLAM AND ANR
S/O ABDUL RAHMAN @ LT ABDUL RAHMAN
R/O LANKAPATTY, WARD NO. 4,
LANKA (MB),
P.S. LANKA
DIST. HOJAI, ASSAM
PIN- 782446

2: MR NIRMAL GHOSH
S/O RUHINI GHOSH @ ROHINI GHOSH
R/O LANKAPATTY
WARD NO. 4

LANKA (MB)

P.S. LANKA
DIST. HOJAI
ASSAM
PIN- 78244

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. N K MURRY

Advocate for the Respondent : PP, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE AJIT BORTHAKUR**

ORDER

Date : 08.08.2023

Heard Ms. O. Kits, learned Counsel for the accused petitioners as well as Mr. B.B.Gogoi, learned Additional Public Prosecutor.

By this 2nd petition under Section 439 Cr.P.C., the accused-petitioners, namely, **1. Siraj UI Islam @ Sirajul Islam** and **2. Nirmal Ghosh** have prayed for grant of bail in connection with **Special NDPS Case No. 27/2022** pending in the court of learned Special Judge, Karbi Anglong, Diphu (arising out of Diphu PS Case No.17/2022) under Sections **20 (C)** of the NDPS Act.

It may be mentioned herein that vide Bail Application 1355/2022, bail prayer of the accused petitioner No. 1 was rejected by order, dated 19.07.2022 and vide Bail Application 1352/2022, bail prayer of the accused petitioner No. 2 was rejected by order, dated 19.07.2022.

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

It is noticed that the accused petitioners have been in judicial custody since 03.03.2022, i.e. for 520 days.

The case relates to recovery and seizure of 26.34 Kgs of Ganja from the possession of the accused petitioners and two other persons.

A perusal of the case record reveals that the learned Trial Court framed charges under Sections 20(b) (ii) (c) r/w Section 29 of the N.D.P.S. Act against the accused petitioners and two others, vide order, dated 24.05.2022. Thereafter, the learned Trial Court has examined 5 (five) prosecution witnesses, out of 8 (eight) witnesses. FSL report gave positive tests for cannabis (ganja).

Both the accused petitioners are permanent residents under Lanka Police Station, Dist-

Hojai, Assam.

In view of above, 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 considered the evidence so far recorded in the case and so far the remaining evidence of PWs are concerned as well as considering 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 the accused petitioners, named above, shall be released on bail of **Rs.1,00,000/- (Rupees One Lakh) each** only with 02(two) sureties of like amount to the satisfaction of the learned **Special Judge (NDPS Act), Karbi Anglong, Diphu** 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 them 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.

Breach of any of the above condition shall render cancellation of the bail in accordance with law.

This disposes of the bail application.

JUDGE

Comparing Assistant