

GAHC010115892023



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

Case No. : Bail Appln./1888/2023

SABIR HUSSAIN AND ANR
S/O BABUL HUSSAIN
R/O BALIJAN
P.S. KHATKHATI
DIST. KARBI ANGLONG, ASSAM
PERMANENT R/O ARJUNPUR, P.S. PATHARKANDI, DIST. KARIMGNAJ,
ASSAM

2: AFTAB HUSSAIN
S/O ABDUL HALIM
R/O LAHARIJAN BASHBARI
P.S. KHATKHATI
DIST. KARBI ANGLONG
ASSAM
PERMANENT R/O ISLAMPUR
P.S. RATABARI
DIST. KARIMGANJ
ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. A GANGULY

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN

ORDER

Date : 23-06-2023

Heard Mr. A. Ganguly, learned counsel for the accused. Also heard Mr. K.K. Parasar, learned Addl. P.P., Assam, for the State respondent.

2. This application, under Section 439 of the Code of Criminal Procedure, is preferred by the accused, namely, (1) Sabir Hussain and (2) Aftab Hussain, who are languishing in jail since 03.08.2021, in connection with the NDPS Case No.10/2022, under Sections 21(c)/23(c)/29 of the NDPS Act, pending in the Court of learned Special Judge (NDPS) Diphu, Karbi Anglong, arising out of Diphu P.S. Case No.211/2021, for grant of bail.

3. It is to be noted here that Diphu P.S. Case No. 211/2021, under Sections 21(c)/29/24 of the NDPS Act, has been registered on the basis of one FIR lodged by SI Raju Bahadur Chetry on 03.08.2021. The essence of allegations made in the aforementioned FIR is that on 02.08.2021, at about 8 am, acting on a tip off, the informant, along with other police officials conducted naka checking and intercepted one Black Coloured Scorpio vehicle, bearing registration No. AS-17-D-0007 and apprehended one driver and co-driver of the vehicle, namely, Md. Sabir Hussain and Md. Aftab Hussain and having checked the vehicle he recovered 532 grams of suspected heroin from a specially built compartment in the fuel tank of the vehicle and seized the same in presence of witnesses, preparing seizure list.

4. Mr. Ganguly, learned counsel for the accused submits that the accused are behind the bar for more than 686 days and after completion of investigation charge sheet has already been submitted and charges have been framed against both of them u/s 21(c)/29/24 NDPS Act and out of 14 prosecution witnesses, 10 witnesses have already been examined and there remains to be examined 4 more witnesses. Mr. Ganguly further submits that the investigating officer (I.O.) is one of the main witness and his evidence has very much significance in the outcome of the case and if the accused are enlarged on bail at this stage, they can get ready to cross-examine the I.O. effectively. It is the further submission of Mr. Ganguly that one of the co-accused have already been enlarged on bail by this court and the present accused are also stands on the same footing and as such, they are entitled to bail on the ground of parity also. Mr. Ganguly, therefore, contended to enlarge the accused on bail.

5. On the other hand, Mr. Parasar, learned Addl. P.P. has vehemently opposed the petition on the ground that out of 14 witnesses, 10 witnesses have already been examined and there are tell-tale material to show that commercial quantity of contraband substances were recovered from the possession of the accused and as such, they have to satisfy the requirement under Section 37 of the NDPS Act -that they are not guilty of the offence and they are unlikely to commit such offence while on bail. Mr. Parasar further submits that as the accused persons have failed to satisfy the requirement under Section 37 of the NDPS Act the accused cannot be enlarged on bail. Further Mr. Parasar submits that the grounds for filing this second bail application is not at all tenable and both the accused persons hails from Karimganj and if at the fag-end of trial, they are enlarged on bail, the same may cause delay in disposal of the case. Therefore,

Mr. Parasar contended to dismiss the petition.

6. Having heard the submission of learned counsel for both the parties, I have carefully gone through the petition as well as the documents placed on record and the scanned copy of the record, received from the learned court below.

7. It is not in dispute that both the accused persons were arrested on 03.08.2021, and since then they have been languishing in jail hazoot for more than 686 days. It is also not in dispute that the accused persons have been charged under Sections 21(c)/23(c)/29 of the NDPS Act and out of the 14 cited witnesses, 10 witnesses have already been examined. Indisputably, the quantity of contraband substance is of commercial quantity, and as pointed out by Mr. Parasar, the learned Addl. P.P., and the bail petition, having been opposed by him, the accused have to satisfy the requirement of section 37 of the NDPS Act, that they are not guilty of the offence and that they will not repeat such offence while on bail.

8. But, having carefully gone through the statement of the witnesses already examined and having perused the materials available in the scanned copy, this court is unable to derive its satisfaction that the accused persons have been able to satisfy the requirement of Section 37 of the NDPS Act.

9. Though Mr. Ganguly, learned counsel for the accused submits that one of the co-accused has already been enlarged on bail by this court and the present accused persons are also stands on the same footing and entitled to bail on the

ground of parity, the said submission left this court unimpressed, inasmuch as the materials available on the record reveals that contraband substances were recovered from a specially built compartment in the fuel tank of the vehicle, being driven by

the present accused persons and that they have failed to satisfy the requirement of Section 37 of the NDPS Act, and on such count they are not on the same footing with that of the accused already enlarged on bail, from whom nothing was recovered.

10. The requirement of section 37 of the NDPS Act having been failed to satisfy by the present accused, the ground so assigned for maintain this second bail application is found to be not at all satisfactory, and on such count found to be not maintainable, this court is left with no other option but to dismiss the same. Accordingly, the same stands dismissed.

11. However, the learned court below is directed to complete the trial within a period of 3 [three] months from today without being influenced by any of the observations made herein above, as the same has been made only for the purpose of disposing of this bail application, not on the merit of the case.

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JUDGE

Comparing Assistant