

GAHC010118912023



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

Case No. : Bail Appln./1927/2023

ASHOK KUMAR
S/O RAM NATH
R/O SAKTI COLONY, JANDLI
MODEL TOWN, UMBALA, P.S.UMBALA
DIST. UMBALA, STATE- HARIYANA
PIN-134003

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MS. A MEDHI
Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE AJIT BORTHAKUR

ORDER

25.07.2023

Heard Ms. A. Medhi, learned counsel appearing for the accused petitioner. Also heard Mr. B. B. Gogoi, learned Addl. Public Prosecutor for the State/respondent.

By this petition under Section 439 Cr.P.C., the petitioner, namely, **Ashok Kumar**, has prayed for grant of bail in connection with **Basistha P.S. Case No. 941/2022** u/s **20(b)(ii)(c)** of the NDPS Act.

The scanned copy of case record along with the case diary, as called for, is

placed before this Court.

Ms. A. Medhi, learned counsel appearing for the accused petitioner, submits that the accused, who is an old man aged about 74 years, has been languishing in judicial custody with a sick health for **529** days despite he was innocent. Ms. Medhi submits that the accused petitioner suspects that the driver of the seized truck might have transported the seized huge quantity of ganja concealing under ginger bags, of which he had no knowledge. Ms. Medhi, therefore, submits that subject to any condition, the accused's bail prayer may be considered favourably.

Mr. B. B. Gogoi, learned Additional Public Prosecutor, submits that the police after completion of investigation, filed the charge-sheet against the present accused and another on 30.01.2023 and charges under Sections 20(b)(ii) (C)/25/29 of the N.D.P.S. Act were framed on 29.04.2023. Mr. Gogoi further submits that thereafter, no prosecution witness has been examined and as noted by the learned trial court in the order, dated 15.06.2023, all the parameters of the accused petitioner are normal vide the medical report. Therefore, Mr. Gogoi submits that in the aforesaid position of the case as on today and in view of the bar contained in Section 37 of the N.D.P.S. Act, the bail application of the accused petitioner may be rejected.

The case relates to recovery and seizure of 2104.800 kg of ganja from the possession of the accused petitioner and another.

It is noticed that the accused petitioner has been in judicial custody since **28.10.2022** that is for **270** days.

The health status report of the accused petitioner submitted by the Jail doctor through the Superintendent, Central Jail, Guwahati reveals that he is

stated to be aged about 56 years, and is suffering from Urinary Tract Infection and eye problem, for which he has been given medication in consultation with the doctors of the G.M.C. Hospital and presently, his health condition is stable.

A perusal of the case record reveals that although charges under Sections 20(b)(ii)(c)/25/29 of the N.D.P.S. Act were framed on 19.04.2023 by the learned trial court against the present accused petitioner and another, no prosecution witness is examined thereafter. The case diary prima facie reveals that the accused petitioner is the owner of the seized truck wherefrom the huge quantity of ganja was recovered and seized. The sample of seized substance gave positive tests for cannabis (ganja) vide the F.S.L. report. Therefore, in view of the bar contained in Section 37 of the N.D.P.S. Act, the bail application of the accused petitioner cannot be considered favourably.

Accordingly, the bail application of the accused petitioner stands **rejected**.

It is however, provided that the accused shall have liberty to file fresh bail application at an appropriate stage of trial of the case.

It is further provided that the learned trial court shall identify the material prosecution witnesses and examine them, if necessary fixing a calendar of evidence published in advance to ensure early disposal of the case.

With the above directions, bail application is disposed of.

JUDGE

Comparing Assistant