

GAHC010136992023



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

Case No. : Bail Appln./2209/2023

JOINUL UDDIN @ JOYNUL HOQUE
S/O- KAMAL UDDIN, R/O- VILL- JAGODISHPUR PART- V, P.O.
JAGODISHPUR, P.S. KATIGORAH, DIST.- CACHAR, ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY P.P., ASSAM

Advocate for the Petitioner : MR. L R MAZUMDER

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE AJIT BORTHAKUR

ORDER

Date : 31.07.2023

Heard Mr. L.R Mazumdar, learned counsel for the accused petitioner as well as Mr. B Sarma, learned Additional Public Prosecutor, Assam for the State respondent.

By this 2nd petition under Section 439 Cr.P.C., the accused-petitioner, namely, **Joinul Uddin @ Joynul Hoque**, has prayed for grant of bail in connection with **Karimganj P.S. Case No.412/2021** under Sections 22(C)/29 of NDPS Act corresponding to Special NDPS Case

No. 39/2021.

Scanned copy of case records is placed before the Court.

It may be mentioned herein that earlier, bail application of the accused petitioner was rejected by this Court vide order, dated 12.04.2023 in Bail Application No.734/2023.

The case relates to recovery of seizure of 1970 nos. of YABA tablets containing Methamphetamine vide the FSL report weighing 201.16 grams from the exclusive joint possession of the present accused petitioner and another.

It is noticed that the accused petitioner is in judicial custody for 826 days since 27.04.2021.

This court, while rejecting the earlier bail application of the accused petitioner, observed as hereinbelow (relevant portion):

“On scrutiny of case record, it appears that after framing of the charges on 25.04.2022, the learned trial court has been consistently trying to ensure production of the listed witnesses of the prosecution for evidence.

The record shows that after framing of charges, the case proceeded to the stage of evidence of witnesses on several dates i.e. on 09.05.2023, 06.06.2022, 02.07.2022, 01.08.2022, 25.08.2022, 22.09.2022, 28.10.2022, 11.11.2022, 12.12.2022, 13.12.2022, 09.01.2023, , 03.02.2023, 03.03.2023 and 31.03.2022, but none of the witnesses appeared on the aforesaid dates fixed.

In view of the above reasons, which are not attributed to either the learned trial court nor the prosecution till date, this Court is of the considered opinion that as the charges involve illegal possession of the commercial quantity of contraband drugs and in view of the bar in Section 37 of the NDPS Act, the accused is not entitled to the benefit of Section 439 CrPC at the present stage of trial of the case until all material witnesses are examined.

Accordingly, the bail application stands rejected.

The learned trial Court is, however, directed to make an endeavour for early disposal of the case avoiding unnecessary adjournments.”

Therefore, as noted in the previous order, dated 12.04.2023 passed in Bail Application No.734/2023, the learned trial court has been constantly making efforts to ensure the attendance of the listed prosecution witnesses and as a result of such efforts, one P.W (P.W.-1) has so far been examined . The case being of serious nature involving possession of commercial quantity of Methamphetamine tablets and in view of the stringent provision contained in Section 37 of the NDPS Act in the matter of granting bail in such situation, on mere ground of length of detention, the bail application of the accused cannot be considered favourably. It may pertinently be noted here that the accused cannot be detained indefinitely in view of Article 21 of the Constitution .

Accordingly, the bail application stands rejected.

The accused petitioner, however given liberty to file a bail application afresh, if so advised and if such application is filed the same shall be considered in accordance with law.

It is further provided that the learned trial court shall examine the material witnesses and summon them and examine within a period of three months from the date of this order, failing which shall consider the bail application of the accused petitioner favorably.

The bail application stands disposed of.

JUDGE

Comparing Assistant