

GAHC010145632023



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

**Case No. : Bail Appln./2348/2023**

NUR MAHAMMAD SK.  
S/O BACCHU SK.  
R/O VILL- KHUDIMARI PART-II  
P.S. GAURIPUR  
DIST. DHUBRI, ASSAM

VERSUS

THE STATE OF ASSAM  
REP. BY THE PP, ASSAM

**Advocate for the Petitioner : MR. S A AHMED**

**Advocate for the Respondent : PP, ASSAM**

**BEFORE**  
**HONOURABLE MR. JUSTICE AJIT BORTHAKUR**

**ORDER**

**08.08.2023**

Heard Mr. S. A. Ahmed, learned counsel appearing for the accused petitioner as well as Mr. B. B. Gogoi, learned Addl. P.P., Assam appearing for the State respondent.

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

**Nur Mahammad Sk,** has prayed for grant of bail in connection with **Gauripur P.S. Case No.259/2022** under Section **22(C) of N.D.P.S. Act.**

Scanned copy of case record along with case diary, as called for, is placed before the Court.

Mr. S. A. Ahmed, learned counsel appearing for the accused petitioner, submits that the accused has been languishing in judicial custody for 368 days despite he is not named in the F.I.R. Mr. Ahmed further submits that the accused has been implicated in the case based on statements of the co-accused persons at a later stage of investigation of the case. Mr. Ahmed further submits that as the charge-sheet in the case has already been laid, further detention of the accused for the purpose of trial of the case may not be required.

Per contra, Mr. B. B. Gogoi, learned Additional Public Prosecutor submits that the case record reveals that 32 numbers of Onereex cough syrup bottles, each containing 100 ml, containing codeine phosphate, were recovered and seized from the possession of the accused petitioner. Mr. Gogoi further submits that presently the case being pending for consideration of charges 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 matter relates to recovery and seizure of 32 numbers of Onereex cough syrup bottles, each containing 100 ml, containing codeine phosphate from the possession of the accused petitioner.

It is noticed that the accused has been in judicial custody since 05.08.2022, that is, for 368 days.

A perusal of the case record along with case diary reveals that the Investigating Officer, after completion of investigation laid a charge-sheet under

Section 22(C)/29 of the N.D.P.S. Act against the present accused and seven others vide order, dated 12.01.2023 and presently, the case is pending for consideration of charges on 10.08.2023. Therefore, in the opinion of this Court, at the aforesaid present stage of the case and 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.

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

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

Return the case diary.

This disposes of the bailapplication.

**JUDGE**

**Comparing Assistant**