

GAHC010146262023



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

Case No. : Bail Appln./2349/2023

KUNAL BHATTACHARJEE AND ANR.
S/O- KAJAL KANTI BHATTACHARJEE, R/O- BRAHMAN SHASON, P.S.
NILAMBAZAR, DIST. KARIMGANJ, ASSAM, PIN- 788722.

2: SAURAV SHARMA
S/O- SANJOY SHARMA
R/O- BRAHMAN SHASON
P.S. NILAMBAZAR
DIST. KARIMGANJ
ASSAM
PIN- 788722

VERSUS

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

Advocate for the Petitioner : MR. P K ROY

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE AJIT BORTHAKUR

ORDER

Date : 08.08.2023

Heard Mr. P.K.Roy, learned Senior Counsel for the accused petitioners as well as Mr. B.B.Gogoi, learned Additional Public Prosecutor.

By this petition under Section 439 Cr.P.C., the accused-petitioners, namely, **1. Kunal Bhattacharjee** and **2. Saurav Sharma** have prayed for grant of bail in connection with

Special (NDPS) Case No. 97/2022 pending in the court of learned Sessions Judge, Karimganj (arising out of Bazaricherra PS Case No.117/2022) under Sections **22(c)/25/29** of the NDPS Act.

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

Mr. P.K.Roy, learned Senior Counsel for the accused petitioners submits that both the accused petitioners have been in judicial custody for more than one year and twenty four days despite being innocent. Mr. Roy further submits that although charge-sheet was laid on 10.10.2022, under Section 22 (c)/25/29 of the NDPS Act, the charges are yet to be considered despite the accused persons are in judicial custody for prolonged period for non-appearance of co-accused. Therefore, Mr. Roy submits that subject to any condition, the accused petitioners may be directed to be released on bail.

Per contra, Mr. BB Gogoi, learned Additional Public Prosecutor, submits that 130 bottles, each of 100 ml, codeine phosphate based cough syrup bottles, amounting to commercial quantity, were seized from the two accused petitioners and after completion of investigation, the investigating officer submitted the charge-sheet under Sections 22 ©/25/29 of the NDPS Act. However, Mr. Gogoi submits that as the learned trial court is yet to consider the charges and thereafter, witnesses are yet to be examined as well as in view of the bar contained in Section 37 of the NDPS Act, the bail application of the accused petitioners may not be considered favorably.

The allegation in the FIR reveals recovery and seizure of 130 Nos. of KOFDEL syrup bottles (cough syrup), each of 100 ml, containing codeine phosphate from the possession of the accused petitioners

It is noticed that the accused petitioners have been in judicial custody since 26.05.2022, i.e. for 424 days.

A perusal of the case record along with the case diary reveals that the contraband codeine phosphate based cough syrup bottles were recovered and seized from the possession of the accused petitioners in front of a pharmacy vide the F.S.L. report and seizure memo. After completion of investigation, the police laid a charge-sheet on 10.10.2022 and after

consideration of the materials available on records framed charges under Sections 22 (C)/25 /29 of the N.D.P.S. Act against both of them vide order, dated 28.07.2023 and fixed the matter on 11.08.2023 for case management hearing etc. Therefore, this Court is of the opinion that for the aforesaid reasons and in view of the bar contained in Section 37 of the NDPS Act, at the present stage of trial, the bail application of the accused petitioners cannot be considered favorably, on mere ground of length of detention.

Accordingly, the bail application stands rejected.

However, the accused petitioner is given liberty to file fresh bail application, if so advised and if such bail application is filed, the same shall be considered of by the learned court below at an appropriate stage of trial in accordance with law.

With the above direction, the bail application stands disposed of.

JUDGE

Comparing Assistant