

GAHC010150442023



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

Case No. : Bail Appln./2392/2023

ABDUL JALIL ALI @ MD. ABDUL JALIL AND ANR.
S/O LATE KUDDUS ALI, R/O VILL-CHANGMAJI, P.S.-DABOKA, DIST-HOJAI,
ASSAM

2: MUSSTT. SABIKUL NEHAR
W/O ABDUL JALIL ALI
R/O VILL-CHANGMAJI
P.S.-DABOKA
DIST-HOJAI
ASSA

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

Advocate for the Petitioner : MR. A GOYAL

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE AJIT BORTHAKUR

ORDER

12.09.2023

Heard Mr. A. Goyal, learned counsel for the accused petitioners. Also heard

Mr. B.B. Gogoi, learned Addl. Public Prosecutor, Assam appearing for the State respondent.

By this petition under Section 439 Cr.P.C. read with Section 37 of the N.D.P.S. Act, the accused petitioners, namely **1) Abdul Jalil Ali @Md. Abdul Jalil and 2) Musstt. Sabikul Nehar** have prayed for grant of bail in connection with **Daboka P.S. Case No.276/2022** under Sections **21(c)/24/29** of the N.D.P.S. Act [corresponding to **Special (N.D.P.S.) Sessions Case No.31/2023**, pending in the Court of learned Sessions Judge, Hojai.]

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

Mr. A. Goyal, learned counsel for the accused petitioners, submits that the accused petitioners are falsely roped into the case as they are not the owners of the seized contraband and they do not have any knowledge as to how the same was seized from their house. Mr. Goyal further submits that the accused petitioners have three minor children aged 9, 10 and 12 years respectively and therefore, they may be released on bail subject to any conditions.

Per contra, Mr. B.B. Gogoi, learned Addl. Public Prosecutor, submits that the seized contraband was seized from the house of the accused petitioners. Mr. Gogoi submits that the seized heroin amounts to commercial quantity under the N.D.P.S. Act and as such, in view of the bar contained in Section 37 of the N.D.P.S. Act in the matter of granting bail, the instant bail application of the accused petitioners may be rejected.

The case relates to recovery and seizure of 267 gms. of suspected heroin and cash amount of Rs.1 lakh from the house of the accused petitioners.

It is noticed that the accused petitioners have been in judicial custody

since 26.10.2022, that is, for 322 days.

The F.S.L. report shows that the sample of seized substance gave positive tests for heroin and the percentage of heroin was found to be 88.81.

After completion of investigation the police submitted charge-sheet under Sections 21(c)/24/29 of the N.D.P.S. Act against the accused petitioners and accordingly, after consideration of the material on record, the learned Special Judge (N.D.P.S.) Act, Hojai has framed charges under Sections 21(c)/29/24 of the said Act vide order, dated 06.07.2023 and presently, the case is pending for evidence of the prosecution side. No prosecution witness is examined thereafter.

As the trial of the case has just commenced with the framing of the charges and in view of the bar contained in Section 37 of the N.D.P.S. Act, this Court is of the opinion that if the liberty of bail is granted to the accused petitioners at the present initial stage of trial, the trial of the case is likely to be adversely affected due to their possible jumping the course of trial and repetition of similar offences while on bail.

Accordingly, the bail application stands rejected.

This disposes of the bail application.

JUDGE

Comparing Assistant