

GAHC010150512023



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

Case No. : Bail Appln./2389/2023

KAPIL SAH
S/O SHRI PRABHAT SAH @ BABLU, PRESENT ADDRESS-R/O MILANPUR,
P.S.-BOKAJAN, DIST- KARBI ANGLONG, ASSAM. PERMANENT ADDRESS-
R/O MANIARPUR, SAMASTIPUR, WARISH NAGAR, BIHAR-848133

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

Advocate for the Petitioner : MOTIUR RAHMAN

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE AJIT BORTHAKUR

ORDER

11.09.2023

Heard Mr. A.S. Tapadar, learned counsel for the accused petitioner. 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., the accused petitioner, namely **Kapil Sah** has prayed for grant of bail in connection with **Special (N.D.P.S.) Case No.18/2023** pending in the Court of learned Sessions Judge, Hojai arising out of **Hojai P.S. Case No.540/2022** under Sections **20(C)/29** of the N.D.P.S. Act, 1985.

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

The case relates to recovery and seizure of 59.204 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 20.12.2022, that is, for 266 days.

The accused petitioner is a resident of Milanpur, P.S.- Bokajan, Dist.- Karbi Anglong and his permanent address is Maniarpur, Samastipur, Warish Nagar, Bihar-848133.

Mr. B.B. Gogol, learned Addl. Public Prosecutor, has raised strong objection against grant of bail to the accused petitioner.

A Perusal of the case record reveals that charges under Sections 20(c)/29 of the N.D.P.S. Act read with Section 34 of the IPC were framed on 03.05.2023. Thereafter, out of the listed 07(seven) prosecution witnesses, 03(three) are examined by the learned trial Court.

This Court is of the opinion that although there is bar under Section 37 of the N.D.P.S. Act in granting bail to accused in matters involving commercial

quantity in view of the mandate under Article 21 of the Constitution of India, if the accused petitioner is released on bail the remaining part of the trial is unlikely to be hampered.

Accordingly, it is provided that the accused petitioner, named above, shall be released on bail of **Rs.1,00,000/- (Rupees One Lakh) only** with two government servant sureties of like amount, as submitted by the learned counsel for the accused petitioner, to the satisfaction of the learned **Special Judge (NDPS Act), Hojai** subject to the following conditions-

- i. That the accused petitioner shall continue to appear before the learned trial Court on all dates to be fixed from time to time till the case is disposed of;
- ii. That the accused petitioner shall not directly or indirectly make any inducement, threat or promise to the remaining prosecution witnesses, who are acquainted with the facts of the case so as to dissuade him/her from disclosing such facts to the Court;
- iii. That the accused petitioner shall refrain from committing any offences similar to the one of which he is accused of commission; and
- iv. That the accused/petitioner and his bailors shall produce their Voter Identity Card /Passport/ Permanent Residential Certificate, whatever is available at the time of submission of the bail bond for satisfaction of the learned Court below regarding their identity and address and then return the same retaining photocopy thereof on

record. If deemed necessary, the learned Court below shall subject the documents to police verification.

Breach of any of the above conditions shall render cancellation of the bail in accordance with law.

This disposes of the bail application.

JUDGE

Comparing Assistant