

GAHC010155542023



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

Case No. : Bail Appln./2601/2023

NISHA KUMARI
W/O LATE MUNNA RAI
R/O VILL- MAKSUDPUR,
P.O. AND P.S. FATWA, DIST. PATNA, BIHAR

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. L R MAZUMDER

Advocate for the Respondent : PP, ASSAM

BEFORE
HON'BLE MR. JUSTICE ROBIN PHUKAN

ORDER

09.10.2023

Heard Mr. L.R. Mazumder, learned counsel for the accused and also heard Mr. K.K. Parasar, learned Additional Public Prosecutor, Assam, appearing for the State respondent.

2. This application, under Section 439 Cr.P.C. is preferred by accused, namely, Nisha Kumari, who has been languishing in jail hazoot since 08.06.2022, in connection with Bazaricherra P.S. Case No.105/2023, under Section 20(b)(ii)(c)/29 of the NDPS Act, for grant of bail.

3. It is to be noted here that the above noted case has been registered on the basis of one FIR lodged by S.I. Dibakar Gogoi of Kathaltoli WP of Karimganj district on 07.06.2022.

4. The essence of allegation made in the said FIR dated 07.06.2022, is that during Naka checking on 07.06.2022, on the NH-208A, they have intercepted one Mahindra Jeeto vehicle, bearing Registration No.AS-10AC-3730, which was coming from Kathaltoli side and during checking they have found three passengers, namely, Nisha Kumari, Raj @ Joy Kumar and Anurag Kumar and recovered all total 23 packets, containing 69 kg of Ganja from their possession.

5. Mr. Mazumder, learned counsel for the accused submits that the accused was arrested on 08.06.2022, and since then she has been languishing in jail hazot for last 489 days. Mr. Mazumder further submits that after investigation police submitted charge-sheet against the accused and till date only one witness has been examined and there is no immediate chance of conclusion of trial and therefore, on the ground of delay the accused is entitled to be released on bail. Mr. Mazumder also referred following case laws in support of his submission:-

(i) **Mohd. Muslim @ Hussain Vs. State (NCT of Delhi) [Criminal Appeal Nos.....of 2023 (@ Special Leave Petition (Crl.) Nos.915/2023), decided on 28.03.2023];**

(ii) **Nitish Adhikary @ Bapan Vs. The State of West Bengal [Special Leave to Appeal(Crl.) Nos.5769/2022, decided on 01.08.2022];**

(iii) **Litan Miah Vs. The State of Assam [Bail Appln./2149/2023, decided on 29.08.2023];** and

(iv) **Abu Sufian Vs. The State of Assam [Bail Appln./1128/2023]**

6. Whereas, Mr. K.K. Parasar, learned Additional Public Prosecutor, Assam, has opposed the petition on the ground that the quantity of ganja recovered from the alleged possession of the accused are of commercial quantity and the accused has failed to

satisfy the requirement of Section 37 of the NDPS Act and therefore, it is contended to dismiss the petition.

7. Having heard the submission of learned Advocates of both sides, I have carefully gone through the petition and the documents placed on record and also perused the case laws referred by Mr. Mazumder, learned counsel for the accused and also perused the scanned copy of the record received from the learned Court below.

8. It appears from the case diary that the quantity of Ganja, allegedly recovered from the possession of the accused, is of 69 kg which is of commercial quantity and admittedly, the accused has failed to satisfy the requirement of Section 37 of the NDPS Act. Though Mr. Mazumder submits that this application is preferred on the ground of delay, yet, from the facts and circumstances on the record this Court is unable to satisfy that there is any considerable delay in trial of this case so as to impair her right to speedy trial. It appears from the record that altogether 8 witnesses have been cited in the charge-sheet and out of the same one witness has already been examined.

9. In view of above, this Court is of the view that the ratios laid down in the case laws referred by Mr. Mazumder is not applicable in all force to the facts and circumstances of the case in hand.

10. Accordingly, this Court is inclined to dismiss the petition.

11. However, it is provided that the learned Court below shall make an endeavour to conclude the trial as early as possible preferably within a period of 6(six) months from today and if necessary, the learned Court below shall take recourse to Section 309(1) of the Cr.P.C., without being influenced by any of the observations made herein above, as the same is made only to dispose of this present petition.

Sd/- Robin Phukan
JUDGE

Comparing Assistant