

GAHC010168552023



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

Case No. : Bail Appln./2698/2023

MOJIBUR RAHMAN
S/O SHAHIZUDDIN, P/A OF VILL- 2 NO LARKUCHI, P.S.-MUKALMUA, DIST-
NALBARI, ASSAM, T/A - PACHIM BORAGOAN, NEAR BINAPANI ACADEMY,
P.S.-GARCHUK, DIST- KAMRUP (M), ASSAM

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

Advocate for the Petitioner : MR N J DUTTA

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE AJIT BORTHAKUR

ORDER

Date : 11.09.2023

Heard Mr. N. J. Dutta, learned counsel appearing for the accused petitioner as well as Mr. B. Sarma, learned Addl. Public Prosecutor, Assam.

By this petition under Section 439 Cr.P.C., the accused-petitioner, namely, **Mojibur Rahman**, has prayed for grant of bail in connection with **NDPS Case No. 199/2022 (Garchuk P.S. Case No. 165/2022)** under Sections **22(c)/29** of the NDPS Act.

The scanned copy of the case record along with the case diary, as called

for, is placed before the Court.

It is noticed that the accused petitioner has been in judicial custody since 26.05.2022, i.e. for 473 days.

The case relates to recovery and seizure of suspected psychotropic substance Codeine Phosphate Cough Syrup (Phensedyle) at Boragaon area under Garchuk P.S.

A perusal of the case record reveals that the learned Trial Court framed charge under Section 22(c)/29 of the N.D.P.S. Act against the accused for illegally possessing the said psychotropic substance, vide order dated 17.11.2022. Thereafter, the learned Trial Court has examined three prosecution witnesses, out of listed seven witnesses. The case record, as a whole, reveals that the seized contraband amounts to commercial quantity under the N.D.P.S. Act.

Considering entire aspects of the matter, this Court is of the opinion that although there is bar under Section 37 of the NDPS Act in granting bail to the accused in matters involving commercial quantity in view of the mandate under Article 21 of the Constitution of India, if the accused petitioner, who is a resident under Mukalmua P.S., 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 Lakh** with 2 (two) sureties of like amount to the satisfaction of the **learned Special Judge (NDPS Act), Kamrup (M) at Guwahati** 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; and

- ii) That the accused petitioner shall not directly or indirectly make any inducement, threat or promise to any of the remaining prosecution witnesses; and
- iii) That the accused petitioner shall refrain from committing any similar offences in future, of which he is suspected of commission.

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

This disposes of the bail application.

JUDGE

Comparing Assistant