

GAHC010189242022



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

Case No. : Bail Appln./2355/2022

VIKASH KUMAR
S/O SRI BOHORAN BHARTI
R/O WARD NO. 07, PUSAHO, P.S. BITHAN, DIST. SAMASTIPUR, BIHAR,
PIN- 848207

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM.

Advocate for the Petitioner : MR. I C DEKA

Advocate for the Respondent : PP, ASSAM

BEFORE
HON'BLE MR. JUSTICE ROBIN PHUKAN

O R D E R

06.01.2023.

Heard Mr. IC Deka, learned counsel for the accused. Also heard Mr. RJ Baruah, learned Addl. P.P., Assam, for the State respondent.

This application under Section 439 of the Code of Criminal Procedure, 1973, is preferred by accused, namely, Vikash Kumar, who has been languishing in jail

hazot since 14.04.2022, in connection with the Badarpur P.S. Case No.87/2022, corresponding to Special Case No.58/2022, under Section 20(b)(ii)(c) of the NDPS Act, pending before the learned Special Judge, Karimganj, for grant of bail.

The aforementioned case has been registered on the basis of an FIR, lodged by SI Moon Basumatary of Badarpur P.S., on 14.04.2022, to the effect that acting on a tip off, they have apprehended two persons, namely, Vikash Kumar and Manoj Debberma from Badarpur Night Super Counter, at around 6:45 P.M. and recovered 30.930 Kg. of Ganja in four packets and seized the same in presence of witnesses, preparing seizure list.

Mr. Deka, learned counsel for the accused submits that the accused is behind the bar for 260 days, as he was arrested on 14.04.2022, and he is ready to face the trial and the seized four packets of Ganja were not recovered from his possession and there was another person in the Night Super Counter and therefore, it is contended to allow the petition.

On the other hand, Mr. RJ Baruah, learned Addl. P.P., Assam, referring to the seizure list available in the scanned copy of the record of the learned Court below, submits that four packets of Ganja, were recovered from the joint possession of the present accused and one Manoj Debberma, and that the quantity of Ganja recovered from the accused are commercial quantity, and the rigor of Section 37 of the NDPS Act is applicable in the present case and therefore, Mr. Baruah contended to dismiss the petition.

Having heard the submissions of learned Advocates of both sides, I have carefully gone through the petition and the documents placed on record and also perused the scanned copy of the case record, received from the learned

Court below.

It is not in dispute that the quantity of the Ganja recovered from the alleged possession of the accused is of commercial quantity and the I.O. has already completed the investigation and laid the charge sheet against the accused and the learned Court below has framed charge against the accused under Section 20(b)(ii)(c) of the NDPS Act and the next date is fixed for examination of witnesses on 09.01.2023.

Since the quantity of the contraband substance recovered from the alleged possession of the accused is of commercial quantity, the accused has to satisfy the two requirements of Section 37 of the NDPS Act that there is no reasonable ground to believe that: the accused is not guilty of the offence and that he is not likely to commit any offence while on bail. But, from the materials on record and also from the submission of learned counsel for the accused, this Court is unable to derive its satisfaction that there exists any reasonable ground for believing that the accused is not guilty of the offence and that he is not likely to commit any offence, while on bail. Though the learned counsel for the accused submits that during investigation, nothing has been recovered from his possession, yet the seizure list, dated 14.04.2022 indicates that 30.930 Kg. of Ganja was recovered from the joint possession of present accused and another accused at Bdarpur Night Super Counter, and the seizure list also bears the signature of the accused.

It is also submitted by the learned counsel for the accused that this Court should consider the period of detention of the accused, for enlarging him on bail, yet Hon'ble Supreme Court, in the case of **NCB vs. Mohit Agarwal**, reported in **(2022) 0 Supreme (SC) 619**, has made it clear that where the commercial quantity of the contraband substance is involved, the period of detention of the

accused is immaterial.

In view of above, this Court is of the opinion that this is not a proper stage and fit case to grant the privilege of bail under Section 439 of the CrPC to the accused and therefore, the same stands dismissed.

However, the learned Court below is directed to expedite the trial and conclude the same at the earliest possible time and if necessary, by taking recourse of the provision of Section 309(1) of the CrPC.

In terms of above, the bail petition stands disposed of.

JUDGE

Comparing Assistant