

GAHC010189302023



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

Case No. : Bail Appln./3016/2023

SUMON ROY @ SOMON ROY
S/O SUBHASH ROY
R/O LONGAI ROAD,
KARIMGANJ TOWN,P.S. KARIMGANJ
DIST. KARIMGANJ, ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. M A CHOUDHURY

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE AJIT BORTHAKUR

ORDER

Date : 16.10.2023

Heard Mr. A. Ahmed, learned counsel appearing for the accused petitioner as well as Mr. B. Sarma, learned Addl. P.P., Assam appearing for the State respondent.

By this petition under Section 439 Cr.P.C., the accused-petitioner, namely, **Sumon Roy @ Somon Roy**, has prayed for grant of bail in connection with **Special (NDPS) Case No. 12/2022** arising out of **Karimganj P.S. Case No. 67/2022** under Sections **22(C)/29** of the NDPS Act.

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

It is noticed that the accused petitioner has been in judicial custody since 28.01.2022, i.e. for 626 days.

The case relates to recovery and seizure of 1003 Yaba tablets, weighing 105 grams, from the possession of the accused petitioner.

Mr. Ahmed, learned counsel for the accused petitioner, submits that the accused has been in judicial custody for last 626 days on accusation of allegedly possessing 1003 Yaba tablets (105 grams). Mr. Ahmed also submits that in the instant case, the learned Trial Court has examined 4 prosecution witnesses out of 12 listed witnesses. Mr. Ahmed further submits that the accused petitioner is a permanent resident of Longai Road, Karimganj Town, under Karimganj P.S. and there is no chance of him jumping the course of trial.

Per contra, Mr. Sarma, learned Addl. Public Prosecutor, submits that as the accused has been facing trial for allegedly possessing commercial quantity of YABA tablets and in view of the bar under Section 37 of the NDPS Act, the bail prayer of the accused may not be accepted.

A perusal of the case record, *inter-alia*, reveals that the police, after completion of investigation, laid a charge-sheet under Sections 22(C)/29 of the NDPS Act against the present accused petitioner, vide order, dated 04.06.2022. After consideration of the materials on the case record and hearing of both sides, the learned Trial Court framed charge under Section 22(C) of the NDPS Act against him vide order, dated 30.08.2022. Further, the case record reveals that only 4 prosecution witnesses are examined, out of 12 listed witnesses. On the other hand, it is also noticed that the accused petitioner, being a permanent resident under Karimganj P.S., there is no chance of him jumping the course of trial.

Considering the facts and circumstances, as discussed hereinabove, this Court is of the opinion that although there is bar under Section 37 of the NDPS Act in granting bail 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 Lakh** with two sureties of like amount to the satisfaction of the **learned Special Judge (NDPS Act), Karimganj** 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 listed prosecution witnesses; and
- iii) That the accused petitioner shall refrain from committing any similar offences in future, of which he is suspected of commission; and
- iv) That out of the two sureties, one must be a government servant subject to verification of the relevant documents, if deemed necessary and after such verification, the learned Court below shall return the original documents retaining legible scanned copy thereof on record for future reference.

Any breach of the above conditions shall render cancellation of the bail in accordance with law.

This disposes of the bail application.

JUDGE

Comparing Assistant