

GAHC010193812023



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

Case No. : Bail Appln./3062/2023

MAHMUDUL HASAN KHAN @ MAHMADUL HASSAN KHAN
S/O LATE RAJ ALI KHAN
R/O AIRONGJONGLA PART-III (NEWGHAT), P.S. DHUBRI (SADAR), DIST.
DHUBRI, ASSAM

VERSUS

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

Advocate for the Petitioner : MR. A A R KARIM

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE AJIT BORTHAKUR

ORDER

Date : 16.10.2023

Heard Mr. A.A.R Karim, learned counsel for the accused/petitioner. Also heard Mr. B Sarma, learned Additional Public Prosecutor for the State.

This is an 2nd application made under Section 439 Cr.P.C., seeking bail by the accused-petitioner, namely, **Mahmudul Hasan Khan @ Mahmudul Hassan Khan** in connection with **Special Case No. 266/2022**(arising out of Dhubri P.S. Case No. 1997/2021) u/s 22

(c) of the NDPS Act. (GR No. 6420/2021) pending in the court of learned Special Judge, Dhubri.

The earlier bail application of accused petitioner being Bail Appln. No.1562/2022 was rejected by this Court vide order, dated 20.09.2023.

The scanned copy of case records is received.

The prosecution case, in brief, is that on 20.12.2021, the informant along with his staff on the basis of a reliable information conducted checking of vehicles and duty stopped a vehicle coming from Gauripur side towards Dhubri town and recovered contraband items Pyeevon Spas Plus Capsules 7000 nos. and Nitrosum R 10 Tablets 400 nos. from the present accused petitioner and another co-accused.

The accused petitioner is in judicial custody since 21.12.2021, that is, for 1 year 9 months and 25 days today.

A perusal of the case record reveals that the learned Trial Court framed charge under Section 22 (c) of the N.D.P.S. Act against the accused petitioner and two other co-accused persons, vide order, dated 09.02.2023. Thereafter, the learned Trial Court has examined 8 (eight) prosecution witnesses, out of listed 12 (twelve) witnesses. The case record, as a whole, reveals that the contraband item that was recovered and seized amounts to commercial quantity under the N.D.P.S. Act.

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 and considering the fact that the accused petitioner, who is a resident under Airongjongla Part-III (Newghat), Dhubri (Sadar) P.S., District-Dhubri, if he 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 sureties of like amount to the satisfaction of the learned **Special Judge (NDPS Act), Dhubri** 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; and

(iii) That the accused petitioner shall refrain from committing any offences similar to the one of which he is accused of commission.

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