

GAHC010197262023



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

Case No. : Bail Appln./3178/2023

MD. HABIJUL ISLAM
S/O LATE EMRAJUL ALI @ EMRAJUL ISLAM @ EAMARAJAL ALI
R/O KHATKHATI TILA BASTI,
NEAR MASJID,
P.O. AND P.S. KATHKHATI
DIST. KARBI ANGLONG, ASSAM

VERSUS

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

2:DEPARTMENT OF FOREST
(WILDLIFE) GOVT. OF ASSAM
REP. BY THE PUBLIC PROSECUTOR (WILD LIFE DEPARTMENT)
ASSA

Advocate for the Petitioner : MR. S MUNIR

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE AJIT BORTHAKUR
ORDER

Date : 12.09.2023

Heard Mr. S. Munir, 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, **Md. Habijul Islam**, has prayed for grant of bail in connection with **Special**

(NDPS) Case No. 45/2022 arising out of **Khatkhati P.S. Case No. 08/2022** registered under Sections **21(C)/25/29** of the NDPS Act read with Section **51(1A)** of the Wild Life (Protection) Act, pending in the Court of learned Special Judge (NDPS Act), Karbi Anglong, Diphu.

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

The case against the present accused petitioner relates to recovery and seizure of 795 grams of heroin and also some animal articles, i.e. antler, elephant bone, turtle upper shell, civet cat tail.

It is noticed that the accused petitioner has been in judicial custody since 12.01.2022, that is, for 608 days.

A perusal of the case record reveals that charges under Sections 21(c)/29 of the NDPS Act were framed against the present petitioner and two others and, thereafter, the learned Trial Court has examined ten prosecution witnesses out of thirteen listed witnesses. No charge has been framed under the provision of the Wildlife (Protection) Act.

The present accused petitioner is the driver of the seized vehicle and the contraband was recovered from one modified hidden chamber inside the left side of the diesel tank of the seized vehicle.

Having heard the learned counsel of both the sides and perusal of the case record including the evidence of the prosecution witnesses so far examined in the case as well as the length of detention, this Court is of the considered opinion that despite there is a bar in granting bail in the matters involving commercial quantity of drugs contained in Section 37 of the NDPS Act, the accused petitioner, if released on bail, it is unlikely to adversely affect the remaining part of trial of the case. No person can be detained indefinitely for

the purpose of trial in the light of the mandate of Article 21 of the Constitution of India.

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), Karbi Anglong, Diphu** 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 any of the remaining prosecution witness who are acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court;
- iii) That the accused petitioner shall refrain from committing any similar offences in future, of which he is accused of commission;
- iv) That one of the two sureties must be a government servant subject to verification of the relevant documents and the learned Court below shall return the aforesaid documents after such verification retaining legible scanned copy thereof on record.

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