

GAHC010203942022



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

Case No. : Bail Appln./2594/2022

UTPAL DAS
S/O- SRI PRANAB DAS, R/O- VILL- DEWANBARI, P.S. BORBORUAH, DIST.-
DIBRUGARH, ASSAM

VERSUS

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

Advocate for the Petitioner : MR. S ISLAM

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN
ORDER

10.01.2023

Heard Mr. S. Islam, learned counsel for the accused and Mr. R.J. Barua, learned Additional Public Prosecutor for the State respondent.

2. This application under Section 439 of the Code of Criminal Procedure,

1973, is preferred by accused, namely, Sri Utpal Das, who has been languishing in jail hazot in connection with the Borboruah P.S. Case No. 52/2022, under Section 353 of the IPC read with sections 20[b][ii][A]/27A/29 of the NDPS Act, for granting bail.

3. The aforementioned case has been registered on the basis of one FIR lodged by SI Manoj Newar, IC Lepetkata Out Post, on 31.05.2022, to the effect that acting on a tip off they have conducted search in the house of one Biman Paik, situated at Sessa Tiniali and recovered 439.78 grams of Ganja from his possession.

4. Mr. Islam, learned counsel for the accused submits that the accused was arrested on 01.06.2022, and forwarded to the jail hazoot on the same day and that nothing has been recovered from the possession of the present accused and the prime accused namely, Biman Paik, from which possession the seized Ganja were recovered, has already been enlarged on bail. Mr. Islam further submits that the learned court below has framed charge against the accused under sections 20[b][ii][A]/29 of the NDPS Act and as such, as the quantity of ganja is of intermediate quantity, the rigors of section 37 of the NDPS Act will not come into play here in this case, and therefore, it is contended to allow the petition.

5. On the other hand, Mr. Barua, learned Additional Public Prosecutor, submits that the quantity of contraband substance recovered from the possession of the accused is of intermediate quantity and no charge has been

framed under section 27A of the NDPS Act by the learned court below, though the case was registered under the said section and as such, the rigors of section 37 of the NDPS Act will not come into play here in this case.

6. Having heard the submission of learned Advocates for both sides, I have carefully gone through the petition and the materials placed on record. And it appears from the forwarding report that the accused was arrested on 01.06.2022, and since then he has been languishing in the jail hajat. Further, it appears that the contraband substance recovered and seized from the possession of Biman Paik and he has already been enlarged on bail. It also appears from the status report received from the learned court below that charges have been framed against the accused under sections 20[b][ii][A]/29 of the NDPS Act only.

7. Having regards to above, specially the quantity of Ganja recovered and seized from the accused and also considering the period of detention and the nature and gravity of the offence and the punishment prescribed for the same, and also considering the submission of learned Advocates for both sides, this Court is of the considered opinion that further custodial detention of the accused seems to be not required in the interest of investigation.

8. Accordingly, it is provided that on furnishing a bond of Rs. 25,000/- only, with one surety of like amount to the satisfaction of the learned Special Judge, NDPS Act, Dibrugarh, the accused be enlarged on bail.

9. In terms of above, this bail application stands disposed of.

JUDGE

Comparing Assistant