

GAHC010210232023



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

Case No. : Bail Appln./3274/2023

KAMKHOJIM
S/O T MISAO, R/O VILL. PHAIPJANG P.S. AND DIST. DIMAPUR NAGALAND
PIN 797112

VERSUS

THE STATE OF ASSAM
REP BY THE PP, ASSAM

Advocate for the Petitioner : MR S DEWRI

Advocate for the Respondent : PP, ASSAM

BEFORE
HON'BLE MR. JUSTICE ROBIN PHUKAN

ORDER

13.10.2023

Heard Mr. S. Dewri, learned counsel for the accused and also heard Mr. K.K. Das, learned Additional Public Prosecutor, Assam, appearing for the State respondent.

2. This application under Section 439 of the Code of Criminal Procedure, 1973, is

preferred by three accused Kamkhojim, who has been languishing in jail since 29.08.2021, in connection with the NDPS Case No.158/2021, under Section 21(C)/24/29 of the NDPS Act, pending before the learned Addl. Sessions Judge No.2, Kamrup (M), Guwahati, for grant of bail.

3. It is to be noted here that the aforementioned case has been registered on the basis of an FIR lodged by one Nayan Jyoti Das of Sonapur P.S. on 10.06.2021.

4. The essence of allegations made in the said FIR is that acting on a tip off on 29.09.2021, at about 8.45 pm, the informant and other Police Personnel have apprehended one Bolero vehicle, bearing registration No.MN-07D-3257 and apprehended accused namely, Khaiminlal Touthang, Seiminthang Mate, Paominthang Lhanghal and Kailalson Khongsai and recovered 1.328 kg Heroine from their possession and as per their statement the said consignment of Drugs were supposed to be delivered to one Luluk Kuki and Khaiminlal Lhanghal and thereafter, seized the same in presence of witnesses, preparing seizure list.

5. Mr. Dewri, learned counsel for the accused, submits that the accused is behind the bar since 29.08.2021. Mr. Dewri further submits that the case has already been charge sheeted, and as many as 3 witnesses have been examined so far, out of 9 witnesses cited in the charge sheet. It is the further submission of Mr. Dewri that the nothing has been found from the possession of the present accused and that one of the co-accused has already been enlarged on bail and that he is ready to face trial and will appear before the court on each and every date and therefore, it is contended to allow the petition.

6. On the other hand, Mr. K.K. Das, the learned Addl. P.P. submits that 1.328 kg Heroine from the possession of the co-accused and the same are commercial quantity and the accused has failed to fulfill the twin requirement of Section 37 of the NDPS Act, and

that trail is going on and out of 9 cited witnesses 3 have already been examined and in the event of the accused being enlarged on bail, it will cause delay in disposal of the case and there is possibility of jumping bail and therefore, Mr. Das has contended to dismiss the petition.

7. 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.

8. In the case in hand, the I.O., on completion of investigation, had filed charge sheet against the present accused and five others and the learned Court below had framed charge against the accused under Section under Section 21(C)/24/29 of the NDPS Act, and also examined as many as 3 witnesses, out of 9 witnesses cited in the Charge Sheet.

9. It is a fact that nothing has been recovered from the possession of the accused. But, from the materials placed on record it appears that the accused, along with another accused, was the consignee of seized 1.328 kg Heroine.

10. It is not in dispute that the quantities of the contraband substances, so recovered from the possession of the accused persons are of commercial quantity. And since the quantity of the contraband substance recovered from the possession of the accused is of commercial quantity, the accused persons have to satisfy the twin conditions 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.

11. But, from the materials on record, specially from the scanned copy of the record received from the learned court below 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.

12. In view of above, and also in view of the nature and gravity of the offence and the punishment prescribed for the same this Court is of the opinion that this is not a fit case to grant the privilege of bail under Section 439 of the Cr.P.C. to the accused and therefore, the same stands dismissed.

13. However, the learned Court below is directed to expedite the trial and conclude the same at the earliest possible time, preferably within a period of three months from today, without being influenced by any of the observations made by this court herein above. And if necessary, the learned court below shall take recourse to the provision of Section 309(1) of the Cr.P.C.

14. In terms of above, the bail application stands disposed of.

Sd/- Robin Phukan
JUDGE

Comparing Assistant