

GAHC010211712022



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

Case No. : Bail Appln./2740/2022

GOLJAR UDDIN AHMED @ RAJU AND ANR
SON OF RAHIM UDDIN AHMED
R/O IG ROAD, W/NO. 13, OPPOSITE IG ROAD, JAMA MASZID, P.S. DHUBRI,
DIST. DHUBRI, ASSAM

2: GAFUR UDDIN AHMED @ RAKESH
SON OF RAHIM UDDIN AHMED
R/O IG ROAD
W/NO. 13
OPPOSITE IG ROAD
JAMA MASZID
P.S. DHUBRI
DIST. DHUBRI
ASSA

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. H A SARKAR

Advocate for the Respondent : PP, ASSAM

BEFORE
HON'BLE MR. JUSTICE ROBIN PHUKAN
ORDER

10.01.2023.

Heard Mr. HA Sarkar, learned counsel for the accused. Also heard Mr. RJ Baruah,

learned Addl. P.P., Assam, for the State respondent.

This application under Section 439 of the Code of Criminal Procedure, 1973, is preferred by two accused, namely, Goljar Uddin Ahmed @ Raju and Gafur Uddin Ahmed @ Rakesh, who are languishing in jail hazot since 14.07.2022, in connection with the Dhubri P.S. Case No.363/2022, under Section 22(c) of the NDPS Act, for grant of bail.

The aforementioned case has been registered on the basis of an FIR, lodged by SI Chandan Raut on 13.07.2022, to the effect that acting on a tip off, he has conducted search in the house of Goljar Uddin Ahmed and Gafur Uddin Ahmed and recovered 13 bottles of Eskuf Cough Syrup and 11 bottles of Eskuf Cough Syrup, respectively from their house and seized the same preparing seizure list, in presence of witnesses.

Mr. Sarkar, learned counsel for the accused submits that the accused are languishing in jail hazot for last 181 days and that they are not habitual offenders and ready to participate in the trial and they have denied the charges framed against them by the learned Court below and therefore, it is contended to allow the petition.

On the other hand, Mr. RJ Baruah, learned Addl. P.P., Assam, has vehemently opposed the petition on the ground that the quantity of the contraband substance recovered from the possession of the accused persons are of commercial quantity and the learned Court below has framed the charge, against both the accused under Section 22(c)/25 of the NDPS Act and one prosecution has already been examined, who has implicated the accused persons with the offence charged and therefore, Mr. Baruah contended to dismiss the petition.

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.

It is not in dispute that 13 bottles of Eskuf Cough Syrup and 11 bottles of Eskuf Cough Syrup, were recovered from the house of the accused persons and indisputedly, the quantity, so recovered from their possession is of commercial quantity and as such, the rigors of Section 37 of the NDPS Act is applicable here in this case and the materials available in the scanned copy of the record of learned Court below, 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 similar offence, while on bail.

Though the learned counsel for the accused submits that the accused are not habitual offender, and no material is placed before the Court to that effect by the prosecution side, yet, the learned counsel for the accused failed to place any other materials before this Court to demonstrate that contrabands were not seized from the possession of the accused persons, and that there exist no reasonable ground for believing that they are not guilty of the offence.

In view of above, if find no merit in this petition and therefore, the same stands dismissed.

However, the learned Court below is directed to expedite the trial and conclude the same at the earliest possible time and if necessary, by taking recourse to the provision of Section 309(1) of the CrPC, without being influenced by any of the observations made by this Court, as the same is made only for the purpose of disposing of the present bail petition only, not on the merit of the case.

In terms of above, the bail petition stands disposed of.

JUDGE

Comparing Assistant