

GAHC010213012023



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

Case No. : Bail Appln./3506/2023

MD. SAIF UDDIN
SON OF LATE AKKASH ALI, RESIDENT OF PUB DHANIRAMPATHAR, P.S.
HOJAI, DISTRICT- HOJAI (ASSAM)

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR OF ASSAM

Advocate for the Petitioner : MR A SHARMA

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN

ORDER

Date : 17-11-2023

Heard Mr. A Sharma, learned counsel for the applicant and Mr. D Das, learned Addl. PP, appearing for the State Respondent, Assam.

2. This application under section 439 Cr.P.C is preferred by accused Md. Saif Uddin who has been languishing in jail hajot in connection

with Hojai PS Case No.387/2022 under section 20(c)/29 of the NDPS Act since 05.09.2022 for grant of bail.

3. It is to be noted here that the above noted case has been registered on the basis of an FIR lodged by one SI Arup Jyoti Kalita on 05.09.2022.

4. The essence of allegation made in the FIR is that acting on a tip off the informant, along with staff, had conducted search in Rani Kamlapati Special Train at Hojai Railway Station, at platform No.1, and recovered 106 bundles of Ganja from a toilet of the Sleeper Coach No. S8 and S11 of the said Train and apprehended one Md. Saif Uddin and Md. Islam Uddin, who were trafficking the suspected Ganja in the said train.

5. Mr. Sarma, the learned counsel for the accused, submits that the accused person, who was arrested on 05.09.2022, has been languishing in jail hajat for more than one year. Mr. Sarma further submits that the investigation had culminated in submission of charge sheet against the present accused and another one and the learned court below had framed charge against the accused under section 20(c)/29 of the NDPS Act and examined as many as 6 witnesses, out of 10 witnesses, cited in the charge sheet.

6. Mr. Sarma further submits that the seized contrabands were not recovered from the present applicant and that in a similarly situated circumstances, this court was pleased to grant bail to one of the

accused namely Syed Anish Shah in Bail Application No.2801/2023, vide order dated 13.10.2023, and therefore Mr. Sarma contended to allow this petition.

7. On the other hand Mr. D. Das, learned Addl. PP submits that the quantity of contraband substance recovered from the alleged possession of the accused persons was 202.588 kgs and that the accused had failed to satisfy the twin requirement of section 37 of the NDPS Act, and that the offences are serious in nature and therefore, Mr. D. Das has opposed the petition.

8. Having heard the submission of learned Advocates for both the sides, I have gone through the petition and the documents placed on record and also perused the scanned copy of the record received from the learned Court below.

9. It is not in dispute that the accused was arrested on 05.09.2022, and since then he has been languishing in jail hajat. The scanned copy of the record also reveals that the learned court below had framed charge against the accused on 12.12.2022, and thereafter, the learned court below had examined 6 witnesses, out of 10 witnesses, cited in the charge sheet.

10. It is also not in dispute that the quantity of contraband substance recovered from the alleged possession of the accused is commercial quantity and as such, the accused person has to satisfy the requirement of section 37 of the NDPS Act. But, this Court is unable to

derive satisfaction from the submission of the learned counsel for the accused and also from the documents placed on record that the accused is not guilty of the offence and that he is unlikely to commit any offence while on bail.

11. It is well settled by Hon'ble Supreme Court in a catena of decisions that where the quantity of contraband substance is commercial quantity then the accused has to satisfy the requirement of section 37 of the NDPS Act. Reference may be made to a decision of Hon'ble Supreme Court in **Union of India vs. Ajay Kumar Singh @ Pappu**, Criminal Appeal No. 952 OF 2023 [Arising out of SLP (CRL.) No.2351 OF 2023], decided on 28 March, 2023. It is to be noted here that in the said case Hon'ble Supreme Court, while setting aside the order of granting bail, by the Allahabad High Court, to the accused involving in commercial quantity of contraband substance, has held as under:-

“In view of the above provisions, it is implicit that no person accused of an offence involving trade in commercial quantity of narcotics is liable to be released on bail unless the court is satisfied that there are reasonable grounds for believing that he is not guilty of such an offence and that he is not likely to commit any offence while on bail.”

12. Further it appears from the record of the learned court below that there is no inordinate delay in the trial. The learned court below has already examined 6 witnesses within a span of less than one year and there remains to examine only four witnesses. Though in Bail Application No. 2801/2023, this Court was pleased to grant bail to one

of the accused involving in commercial quantity yet, in the said case, this Court has arrived at a conclusion that there is a little chance of disposing of the case within 2-3 months. But, in the instant case there is a chance of disposal of the case within 2-3 months, as out of 10 witnesses 6 has already been examined by the learned court below.

13. Under the facts and circumstances, this Court is of the view that this is not a fit case that the privilege of bail can be extended to the applicant. Accordingly the petition stands dismissed. However, it is provided that the learned court below shall take recourse of Section 309(1) Cr.P.C and proceed to hear the matter on day to day basis and complete the trial within a period of 3 (three months from today.

JUDGE

Comparing Assistant