

GAHC010216102022



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

Case No. : Bail Appln./2812/2022

KAMAL MALAKAR
S/O LATE PARESH MALAKAR
R/O VILL- EAST KANISHAIL, P.O KANISHAIL, P.S. AND DIST. KARIMGANJ,
ASSAM, PIN-788711

VERSUS

NARCOTICS CONTROL BUREAU
REP. BY SC, NCB

Advocate for the Petitioner : MR H R CHOUDHURY

Advocate for the Respondent : SC, NCB

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN
ORDER

09.01.2023

Heard Mr. H.R. Choudhury, learned counsel for the accused and Mr. S.C. Keyal, learned Standing Counsel, NCB.

2. This application under Section 439 of the Code of Criminal Procedure, 1973, is preferred by accused, namely, Sri Kamal Malakar, who has been languishing in jail hazot in connection with the NCB Crime No. 11/2022, under section 8[C], read with sections 21[c]/29 of the NDPS Act, for granting bail.

3. The allegation made in the complaint is that on 09.05.2022, 303 numbers of cartons containing 30,279 bottles of Phensedyl, Codeine based Cough Syrup, were recovered from one TATA Truck bearing registration No. AS-01-CC-8187, and two persons, namely, Kamal Malakar and Suraj Das have been arrested in connection with the same.

4. Mr. Choudhury, learned counsel for the accused submits that the accused was arrested on 10.05.2022, and since then he has been languishing in jail hazoot for last 234 days. Mr. Choudhury further submits that investigation of the case has already been completed and final complaint has been lodged against the accused and considering the period of detention, it is contended to allow the accused to go on bail.

5. On the other hand Mr. Keyal, learned Standing Counsel, NCB has opposed the petition and submits that within the stipulated time the final complaint has been filed by the complainant on 03.11.2022 and the quantity of contraband substance recovered from the possession of the accused is of commercial quantity and as such, the bar of section 37 of the NDPS Act is applicable herein this case and the accused has failed to satisfy the 2 conditions mentioned in section 37 of the NDPS Act, and therefore, it is contended to dismiss the petition.

6. Having heard the submission of learned counsel for both the parties I have carefully gone through the petition and the documents placed on record and also perused the scanned copy of the final complaint and other documents received from the learned court below.

7. It appears from the search-cum-seizure list, dated 09.05.2022, that 303 numbers of cartons containing 30,279 bottles of Phensedyl Codeine based Cough Syrup was recovered from the possession of Kamal Malakar and Suraj Das from the TATA Truck bearing registration No. AS-01-CC-8187 and the same bears the signature of Kamal Malakar and Suraj Das.

8. Indisputably the quantity of contraband substance recovered from the possession of the accused is of commercial quantity and as such, the rigors of section 37 of the NDPS Act will come into play here in this case. And from the documents placed on record and also from the submissions of the learned counsel for the accused, this court is unable to derive its satisfaction that there exist any reasonable ground for believing that the accused is not guilty of the offence and that he will not commit similar offence while on bail. The offences are serious in nature and the period of detention i.e. 234 days, cannot be a ground to persuade this court to enlarge the accused on bail, in view of judgment of the Hon'ble Supreme Court in the case of **NCB vs. Mohit Agarwal**, reported in **2022 0 Supreme SC 619**.

9. In view of above, this petition stands dismissed.

9. However, the learned court below is directed to expedite the trial and if necessary to take recourse of the section 309[1] of the Cr.P.C.

JUDGE

Comparing Assistant