

GAHC010220782022



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

Case No. : Bail Appln./2864/2022

MD. SAIF UDDIN @ SAIFUDDIN AND ANR
S/O- LT. AKLESH ALI, R/O- VILL- PUB DHANIRAM PATHAR, P.S. HOJAI,
DIST.- HOJAI, ASSAM

2: MD. ISLAM UDDIN @ ISLAMUDDIN
S/O- LT. ARJON ALI
R/O- VILL- THIKADAR BASTI
P.S. HOJAI
DIST.- HOJAI
ASSA

VERSUS

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

Advocate for the Petitioner : MR. K BORUAH

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN

ORDER

09.01.2023.

Heard Mr. K. Boruah, learned counsel for the accused and also heard Ms.

S.H. Bora, learned Addl. P.P., Assam appearing for the State respondent.

This application under Section 439 of the Code of Criminal Procedure, is preferred by accused, namely, Md. Saif Uddin @ Saifuddin and Md. Islam Uddin @ Islamuddin, who are languishing in jail hazot since 06.09.2022, in connection with the Hojai P.S. Case No.387/2022, under Section 20(C)/29 of the NDPS Act, for granting bail.

The above noted case has been registered on the basis of an FIR, lodged by SI Anup Jyoti Kalita of Hojai P.S. on 06.09.2022. The allegation made in the FIR against the present applicants are that- total 202.588 Kg. of suspected Ganja was recovered and seized from their possession on 05.09.2022 at about 1.00 a.m. at Hojai Railway Station from Sleeper Coach No. S8 and S11 of Train No. 01666- Rani Kamlapati Special, which was coming from Agartala towards Guwahati.

Mr. Boruah, learned counsel for the accused submits that the accused have never travelled in the said train and that they were informer of police and on the relevant date they were called by the O.C., Hojai P.S. and implicated in the present case for not giving information to police and nothing has been recovered from their possession and the seized Ganja were recovered from the toilet of the Train No. 01666- Rani Kamlapati Special and they are behind the bar for the last 125 days and they are ready to cooperate with the investigation agency and therefore, it is contended to allow the petition.

On the other hand, Ms. SH Bora, learned Addl. P.P., Assam has vehemently opposed the petition on the ground that the seized Ganja were recovered from the possession of the accused persons, and the same are of commercial quantity and as such the rigors of Section 37 of the NDPS Act are applicable

here and the accused have failed to satisfy the requirements of said section from the materials placed on record, and therefore, it is 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 record, received from the learned Court below.

It appears that the both the accused persons were arrested on 06.09.2022, and since then they are languishing in jail hazot for last 125 days. Further, it appears from the Seizure List, which was available in the scanned copy of the case record, that 202.588 Kg. of suspected Ganja were recovered from the possession of the accused persons and the Seizure List bears the thumb impression of both the accused persons and it also appears that after completion of investigation, the I.O. has submitted charge-sheet, under Section 20(C)/29 of the NDPS Act as the FSL report gave positive test for cannabis (Ganja). Indisputably the quantity of Ganja recovered from the possession of the accused persons is of commercial quantity and as such the rigors of Section 37 of the NDPS Act will come into play and from the documents placed on record and also from the scanned copy of the record of the learned Court below, this Court is unable to derive it's satisfaction that there exists reasonable ground for believing that the accused persons are not guilty of the offence and that they are unlikely to commit any such offence while on bail. In view of above, this Court find no merit in this petition, and accordingly, the same stands dismissed. However, the learned Court below is directed to expedite the trial and if necessary, the Court below shall take recourse to Section 309(1) Cr.P.C. Further, it is being clarified that the observations made hereinabove, is only for

the purpose of disposing of this bail application and not on the merit of the case.

JUDGE

Comparing Assistant