

GAHC010228112023



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

Case No. : Bail Appln./3680/2023

SAMRUL ISLAM AND ANR
S/O YASIN ALI
R/O VILL- PAIKAN GUMRAH
P.S. KATIGORAH
DIST. CACHAR, ASSAM

2: MONWAR HUSSAIN BARBHUIYAN
S/O ABDUL RAJAK BARBHUIYAN
R/O VILL- PAIKAN GUMRAH
P.S. KATIGORAH
DIST. CACHAR
ASSA

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. D HUSSAIN

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE AJIT BORTHAKUR

ORDER

08.11.2023

Heard Mr. D. Hussain, learned counsel for the petitioners. Also heard Mr. B. B. Gogoi, learned Addl. Public Prosecutor for the State/respondent.

By this petition under Section 439 Cr.P.C., the petitioners, namely, **(1) Samrul Islam and (2) Monwar Hussain Barbhuiyan**, have prayed for grant of bail in connection with **Special (NDPS) Case No. 16/2022** (Badarpur P.S. Case No. 35/2022) u/s **21(C)/25/29** of the NDPS Act.

The scanned copy of the case record, as called for, is placed before this Court.

Mr. Hussain, learned counsel appearing for the accused petitioners, submits that the accused persons, who are resident of Cachar, have been languishing in jail for 643 days.

Opposing the bail application, Mr. Gogoi, learned Addl. Public Prosecutor, submits that material prosecution witnesses are yet to be examined in the case and in view of the bar under Section 37 of the NDPS Act, the bail prayer of the accused petitioners may not be accepted.

The case relates to recovery and seizure of 37,700 bottles of Chlorpheniramine Maleate & Codeine Phosphate Cough Linctus 'Pensedyl' from the possession of the FIR named accused persons.

It is noticed that the accused petitioners are behind the bar since 03.02.2022, i.e. for 643 days.

F.S.L report shows that the sample of the seized contraband gave positive tests for codeine.

A perusal of the case record reveals that the charges under Section 21(c) of the NDPS Act read with Section 34 IPC and under section 25/29 of the NDPS Act were framed, vide order, dated 21.09.2022. Thereafter, the learned Trial Court has examined two prosecution witnesses, out of seven listed witnesses.

Therefore, this Court is of the opinion that in view of the bar under Section 37 of the NDPS Act and as more material prosecution witnesses are there to be examined in the case, if the liberty of bail is granted to the accused petitioners at the present

stage of trial of the case, the remaining part of trial of the case may likely to be hampered.

For the above stated reasons, the bail application stands rejected.

It is, however, provided that the accused petitioner shall have liberty to file fresh bail application, if so advised and if such application is filed the same shall be considered and disposed of in accordance with law.

It is further provided that the learned Trial Court shall expedite trial of the case avoiding unnecessary adjournments.

This disposes of the bail application.

JUDGE

Comparing Assistant