

GAHC010228532022



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

Case No. : Bail Appln./3030/2022

SUMIT DHAR
S/O- LT. KIRANMOY DHAR, R/O- SHIV BARI ROAD, KARIMGANJ TOWN,
P.O. AND P.S. KARIMGANJ, PIN- 788710, DIST.- KARIMGANJ, ASSAM
VERSUS
THE STATE OF ASSAM
REP. BY P.P., ASSAM

Advocate for the Petitioner : MR D C CHAKRAVARTY

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN

ORDER

09.01.2023.

Heard Mr. D.C. Chakravarty, learned counsel for the accused and also heard Ms. S.H. Bora, learned Addl. P.P., Assam, for the State respondent.

This application under Section 439 of the Code of Criminal Procedure, is preferred by accused, namely, Sumit Dhar, who has been languishing in jail hazot since 30.05.2022, in connection with the NDPS Case No.166/2022 under Section 21(c)/29 of the NDPS Act, arising out of Basistha Police Station Case No.1023/2021 for granting bail.

The above case has been registered on the basis of an FIR, lodged by SI

Gourav Kausavmuni Bhumij of Basistha P.S. on 09.06.2022, to the effect that acting on a tip off they have intercepted a Truck, bearing registration no. NL 01 AB 9942, at about 2 p.m. at Jorabat and they have found total 44,160 bottles of Eskuf Cough Syrup, in 276 cartoons, and seized the same in presence of witnesses and also arrested the driver of the vehicle .

Mr. Chakravarty, learned counsel for the accused submits that the accused is behind the bar for 224 days, as he was arrested on 30.05.2022, and he has been falsely implicated herein in this case and the co-accused has already been enlarged on default bail by the learned Court below, under Section 167(2) Cr.P.C., and nothing has been recovered from the possession of the present accused person and he is ready to cooperate with the investigating agency and therefore, it is contended to allow the petition.

On the other hand, referring to the materials availd on the record and the scanned copy of the record of the learned Court below, Ms. SH Bora, learned Addl. P.P., Assam submits that the quantity of contraband substance seized from the co-accused is of commercial quantity and the present accused has purchased the same in the name of M/s Nalini Drugs Distributor, from M/s Hematech Pharmaceuticals, Panbazar and he made the said transactions vide Cheque No. 273213, of Canara Bank, and Cheque No.050955, of Bank of India and as the requirement of Section 37 of the NDPS act is not satisfied with herein in this case by the accused, he is not entitled to bail 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.

Indisputably, the quantity of contraband substance recovered from the possession of the co-accused is of commercial quantity, and there are materials on the record to show that the present accused had purchased the same from M/s Hematech Pharmaceuticals, Panbazar and he made the aforesaid transactions, vide Cheque No. 273213, of Canara Bank and Cheque No.050955, of Bank of India. As the quantity of contraband substance involved in this case is of commercial quantity, the two conditions of Section 37 of the NDPS Act has to be satisfied by the accused person. But, from a perusal of the documents placed on record and also from the scanned copy of the record of the learned Court below and also from the submission of Mr. Chakravarty, learned counsel for the accused person this Court is unable to derive it's satisfaction that there exists any reasonable ground for believing that the accused person is not guilty of the offence and that he is unlikely to commit any such offence while on bail.

In view of above, this Court is of the view that this is not a fit case where privilege of bail can be extended to the accused. And accordingly, the petition stands dismissed. However, the learned Court below is directed to make endeavor to dispose of the case as early as possible without being influenced by any of the observation made hereinabove, which is made only for the purpose of disposing of the present bail application, and if necessary, the Court below shall take recourse to Section 309(1) Cr.P.C.

JUDGE

Comparing Assistant