

GAHC010228802022



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

Case No. : Bail Appln./3028/2022

SRI DEEPAK @ DIPU SRIVASTAV
S/O- LT. JOGENDRA SRIVASTAV, VILL- KACHJIKOTA, P.S. BIHPURIA, DIST.-
LAKHIMPUR, ASSAM

VERSUS

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

Advocate for the Petitioner : MR G PHUKAN

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN

ORDER

Date : 20-01-2023

Heard Mr. G Phukan, learned counsel for the accused and also heard Mr. BB Gogoi, learned Addl. PP, appearing for the State respondent.

This application under Section 439 Cr.P.C., is preferred by accused, ***Sri Deepak @ Dipu Srivastav***, who has been languishing in jail hajat in connection with ***Laluk PS Case No.195/2022***, under section ***20(b)(ii)***

(c)/29 of the NDPS Act, for grant of bail.

The said case has been registered on the basis of an FIR lodged by SI Naziruddin Khan of Laluk PS on 06.10.2022, to the effect that acting on a tip off, they have intercepted one vehicle bearing registration No.SK 08 P 0727 with two persons, namely, Deepak Srivastav and Raju Deuri and recovered 37.776 kgs of ganja from their possession and seized the same in presence of witnesses.

Mr. Phukan, the learned counsel for the accused submits that the accused was arrested on 06.10.2022 and since then he is behind the bar for the last 105 days and that while he was proceeding to Dhemaji with Raju Deuri, on the request of one Birinchi Deuri, he has carried some packets in his vehicle to Dhemaji. Then police apprehended them and seized the articles carried by them and that he is innocent and not aware of the contrabands in the packets and that they are ready to cooperate with the investigating agency and considering the same and also the length of detention, Mr. Phukan contended to allow this petition.

Whereas, Mr. BB Gogoi, learned Addl. PP has opposed the petition on the ground that the quantity of ganja recovered from the possession of the accused is of commercial quantity and the accused has to satisfy the rigors of Section 37 of the NDPS Act and the accused could not satisfy the said requirement therefore, Mr. Gogoi, contended to dismiss the petition. Mr. Gogoi has produced the case diary and the FSL report which gave positive test for cannabis.

Having heard the submission of learned Advocate for both the sides, I have carefully gone through the petition and the documents placed on record.

It appears from the seizure list dated 06.10.2022 that 37.776 kgs of ganja was recovered from the possession of the accused person. And as

per FSL report, the same gave positive test for cannabis. Indisputably, the quantity of contraband substance, so recovered from the possession of the accused, is of commercial quantity and as such, the accused has to satisfy the rigors of section 37 NDPS Act, as the learned Addl. PP has opposed the petition. But, from the documents placed on record and also from the submissions advanced by the learned counsel for the accused, this Court is unable to derive its satisfaction that there exists any reasonable ground for believing that accused is not guilty of the accused and that he is unlikely to commit such offence while on bail. Though the learned counsel for the accused submits that the length of detention can be considered while granting bail, this Court is unable to record concurrence to the same, in view of the law laid down by the Hon'ble Supreme Court in the case of ***Mohit Agarwal Vs. NCB***, reported in ***2022 SCC Online SC***.

In view of the above, this petition stands dismissed.

JUDGE

Comparing Assistant