

GAHC010233962022



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

Case No. : Bail Appln./3134/2022

ASIF SEIKH AND ANR
S/O HARU SEIKH
VILL- DURGA MANDIR
P.O. BALADMARI
DIST. GOALPARA,
PIN-783121

2: RAFIKUL ISLAM
S/O JAMALUDDIN
VILL-KABAITARY PT.V

P.S. JOGIGHOPA
DIST. BONGAIGAON

PIN-783138

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. A ROSHID

Advocate for the Respondent : PP, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN
ORDER**

04.01.2023

Heard Mr. A. Roshid, learned counsel for the accused and Mr. R.J. Barua, learned Addl. P.P. for the State respondent.

2. This application under Section 439 of the Code of Criminal Procedure, 1973, is preferred by accused, namely, Asif Seikh and Rafikul Islam, who have been languishing in jail hazot since 29.08.2022, in connection with the Goalpara P.S. Case No. 197/2022, under Sections 22[c]/29 of the NDPS Act, for granting bail.

3. The said case has been registered on the basis of an FIR lodged by one SI - S.K. Ayez, on 27.08.2022, to the effect that acting on a tip off they have conducted search in the house of the accused Asif Seikh situated at Durgamandir, at about 7 pm and recovered 240 numbers of Chlorpheniramine Maleate & Codeine Phosphate Syrup [Xlintus-Forte Cough Syrup 100 ml each] and also apprehended Nayan Kumar Das on the basis of their statements they have conducted search in the house of Rafikul Islam and recovered 50 numbers of Codeine Base Cough Syrup [ToLEX-CC 100 ml each] and seized the same preparing seizure list in presence of witnesses.

4. Mr. Roshid, learned counsel for the accused submits that the accused are behind the bar for last 120 days and that they have no antecedent of any criminal activities and nothing was recovered from the possession of the

accused Rafikul Islam, who hails from Bongaigaon district and the bar of section 37 of the NDPS Act will not come into play here in this case, and therefore, it is contended to allow this petition.

5. Whereas Mr. Barua, learned Addl. P.P. has opposed the petition on the ground that the quantity of contraband substance recovered from the accused persons are of commercial quantity and as such, the bar of section 37 of the NDPS Act will come into play and there is no reasonable ground to show that the accused persons are not guilty of the offence alleged in the FIR and that they will not commit any similar offence while on bail, 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 case diary with the assistance of Mr. Barua.

7. Admittedly the quantity of contraband substance recovered from the possession of both the accused persons are of commercial quantity and since Mr. Barua, learned Addl. P.P. for the State respondent has opposed the bail petition the accused have to satisfy the rigors of section 37 of the NDPS Act here in this case.

8. It appears from the seizure list, available on the record of the learned court below and also from the FIR that 240 numbers of Chlorpheniramine Maleate & Codeine Phosphate Syrup [Xlintus-Forte Cough Syrup 100 ml each] was recovered from the possession of the accused Asif Seikh and 50 numbers of

Codeine Base Cough Syrup [ToLEX-CC 100 ml each] was recovered from the possession of the accused Rafikul Islam. Though the learned counsel for the accused submits that nothing has been recovered from the possession of the accused Rafikul Islam, the submission is found to be misleading one as the FIR and the seizure list clearly shows that 50 bottles of Codeine Base Cough Syrup [ToLEX-CC 100 ml each] was recovered from the possession of the accused Rafikul Islam. It also appears from the record of the learned court below that after completion of investigation the IO has laid charge sheet against both the accused persons to stand trial under sections 22[c]/29 of the NDPS Act.

9. Having perused the same, this court is unable to derive its satisfaction that there is no reasonable ground to believe that the accused persons are not guilty of the offence alleged in the FIR and that they will not commit similar offence while on bail.

10. In view of above, this court is of the view that this is not a fit case where the privilege of bail can be extended to both the accused.

11. Accordingly the petition stands dismissed.

JUDGE

Comparing Assistant