



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

Case No. : Bail Appln./3808/2023

1. SABIR HUSSAIN

S/O BABUL HUSSAIN, R/O BALIJAN

P.S. KHATKHATI DIST. KARBI ANGLONG, ASSAM

PERMANENT R/O ARJUNPUR, P.S. PATHARKANDI, DIST.

KARIMGNAJ,

ASSAM

2. AFTAB HUSSAIN

S/O ABDUL HALIM

R/O LAHARIJAN BASHBARI P.S. KHATKHATI

DIST. KARBI ANGLONG, ASSAM

PERMANENT R/O ISLAMPUR

P.S. RATABARI, DIST. KARIMGANJ

ASSAM

VERSUS

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

Advocate for the Petitioner : MR. A. K. Talukdar

Advocate for the Respondent : Mr. K.K. Parasar, Addl. P.P.,

Assam

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

Date : 08.12.2023

Heard Mr. A. K. Talukdar, learned counsel for the accused. Also heard Mr. K.K. Parasar, learned Addl. P.P., Assam, for the State respondent.

2. This application, under Section 439 of the Code of Criminal Procedure, is

preferred by the accused, namely, (1) Sabir Hussain and (2) Aftab Hussain, who are languishing in jail hazot since 03.08.2021, in connection with the NDPS Case No.10/2022, under Sections 21(c)/23(c)/29 of the NDPS Act, pending in the Court of learned Special Judge (NDPS) Diphu, Karbi Anglong, arising out of Diphu P.S. Case No.211/2021, for grant of bail.

3. It is to be noted here that Diphu P.S. Case No. 211/2021, under Sections 21(c)/29/24 of the NDPS Act, has been registered on the basis of one FIR lodged by SI Raju Bahadur Chetry on 03.08.2021. The essence of allegations made in the aforementioned FIR is that on 02.08.2021, at about 8 am, acting on a tip off, the informant, along with other police officials conducted naka checking and intercepted one Black Coloured Scorpio vehicle, bearing registration No. AS-17-D-0007 and apprehended one driver and co-driver of the vehicle, namely, Md. Sabir

Hussain and Md. Aftab Hussain and having checked the vehicle he recovered 532 grams of suspected heroin from a specially built compartment in the fuel tank of the vehicle and seized the same in presence of witnesses, preparing seizure list.

4. Mr. Talukdar, learned counsel for the accused, submits that the accused are languishing in jail for more than 855 days and that after completion of investigation charge sheet has already been submitted and charges have also been framed against both of them u/s 21(c)/29/24 NDPS Act. Mr. Talukdar further submits that altogether 14 prosecution witnesses have been cited in the charge sheet and out of the same, 13 witnesses have already been examined and there remains to be examined one witnesses. Mr. Talukdar further submits that this is the second bail application and while dismissing the earlier bail application, vide order dated 23.06.2023, this court has directed the learned trial court to complete trial within a period of three months, but, the learned trial court has failed to complete the same within stipulated period and therefore the accused are entitled to be released on bail. Mr. Talukdar has also referred one case law – **Mohd. Muslim alias Hussain vs. State (NCT of Delhi)** reported in **2023 OnLine SC 352**. Mr. Talukdar further submits that nothing has been recovered from the possession of the accused and also they have no antecedent of criminal activities and that co-accused have already been enlarged on bail by this court and therefore, it is contended to allow this petition.

5. Whereas, Mr. Parasar, learned Addl. P.P. has vehemently opposed the petition on the ground that out of 14 witnesses, 13 witnesses have already been examined and there is evidence to show that commercial quantity of contraband substances were recovered from the possession of the accused. Mr. Parasar further submits that the accused have to satisfy the twin requirement of Section 37 of the NDPS Act. Mr. Parasar further submits that the trial is in fag end and if enlarged on bail it will be difficult to conclude trial soon and there is possibility of jumping bail. Therefore, Mr. Parasar contended to dismiss the petition.

6. Having heard the submission of learned counsel for both the parties, I have carefully gone through the petition as well as the documents placed on record and the scanned copy of the record, received from the learned court below.

7. Here in this case, both the accused persons are languishing in jail hazoot since 03.08.2021, and since then they have been languishing in jail hazoot for more than 855 days. It is also appears that having charged the accused persons under Sections 21(c)/23(c)/29 of the NDPS Act, the learned court below had examined 13 cited witnesses, out of 14 witnesses cited in the charge sheet.

8. It is not in dispute that the quantity of contraband substance allegedly recovered from the possession of the accused are of commercial quantity. And as such the accused have to satisfy the twin requirement of section 37 NDPS Act that they are not guilty of the offence and that they will not repeat such offence while on bail.

9. But, having carefully gone through the evidence of the witnesses so examined by the learned court below and having perused the materials available in the record of the learned court below, this court is unable to derive its satisfaction that the accused persons have been able to satisfy the requirement of Section 37 of the NDPS Act. Though Mr. Talukdar submits that the accused have no criminal antecedent and that nothing has been recovered from their possession, yet, I find no substance in the same in view of the materials available on the record.

10. Though, one of the co-accused has already been enlarged on bail by this court, yet, the materials available on the record reveals that contraband substances were recovered from a specially built compartment in the fuel tank of the vehicle, being driven by the present accused persons and as such, they are not on the same footing with that of the accused already enlarged on bail, from whom nothing was recovered.

11. It is a fact that within stipulated period of three months the learned court below has failed to complete the trial. But, it appears that the trial has progressed substantially and there remains to examine only one witness and in the meantime examination of said witness also might have been completed. I have gone through the case law **Mohd. Muslim alias Hussain** (supra) and find that the ratio laid down in the said case is not applicable in all force in the given facts and circumstances of the case in hand. Be it noted here that in the said case the accused was behind the bar for more than seven and half years.

12. In the result, this bail application stands dismissed, leaving the parties to bear their own cost. We hope and trust that the learned court below shall conclude the trial at the earliest possible time, without being influenced by any of the observations made herein above.

JUDGE

Comparing Assistant