

GAHC010238302022



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

Case No. : Bail Appln./3182/2022

MOKLESUR RAHMAN
S/O- SADEM ALI, R/O- VILL- AMERBHITA, CHOTO BASHJANI, P.S. DHUBRI,
DIST.- DHUBRI, ASSAM

VERSUS

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

Advocate for the Petitioner : MR. M AHMED

Advocate for the Respondent : PP, ASSAM

BEFORE
HON'BLE MR. JUSTICE ROBIN PHUKAN

O R D E R

04.01.2023.

Heard Mr. M. Ahmed, learned counsel for the accused. Also heard Ms. SH Bora, learned Addl. P.P., Assam appearing for the State respondent.

This application under Section 439 of the Code of Criminal Procedure, 1973, is preferred by accused, namely, Moklesur Rahman, who is languishing in jail hazot since 20.02.2022, in connection with the Special Case No.219/2022, arising out of Dhubri P.S. Case No.132/2022, registered under Sections 120-B/399 of the IPC, read with Section 25(1-A) of the Arms Act, read with Section 22(b)/22(c) of the NDPS Act, for grant of bail.

The above noted Dhubri P.S. Case No.132/2022 has been registered on the basis of an F.I.R., lodged by SI Safiquel Hussain of Dhubri P.S. on 19.02.2022, to the effect that acting on a tip off, they have conducted search in the house of one Anisur Rahman, situated at Amerbhita, near market at about 1:45 A.M., and recovered one country made black coloured revolver along with six rounds of 9 mm live ammunition and also recovered from the possession of accused Moklesur Rahman, Simplex C+ capsules, 25 strips containing 200 capsules and seized the same in presence of witnesses, by preparing seizure list.

Mr. M. Ahmed, learned counsel for the accused submits that the accused is behind the bar for the last 318 days and the I.O. has submitted the charge sheet, after completion of the investigation against the accused to stand the trial, under Section 120-B/399 of the IPC, read with Section 22(b)/22(c) of the NDPS Act, read with Section 25(1-A) of the Arms Act. Referring to the order of the learned Court below, passed in Special Case No.219/2022, dated 17.08.2022, Mr. Ahmed submits that the charges have been framed against the accused under Sections 120-B/399 of the IPC, read with Section 20(b) of the NDPS Act. Mr. Ahmed further submits that the I.O. has submitted the charge sheet after 87 days of arrest of the accused and on that count also, the accused is entitled to default bail, here in this case. Further, Mr. Ahmed submits that the I.O. has cited nine witnesses in the charge sheet and out of the nine witnesses,

four witnesses have already been examined by the prosecution side and that except the present accused, the learned Court below has granted bail to all other co-accused and therefore, Mr. Ahmed contended to allow the petition.

On the other hand, Ms. SH Bora, learned Addl. P.P., Assam submits that the charges against the accused is framed only under the IPC Sections and under the NDPS Act and the witnesses, already examined by the prosecution side has implicated the accused with the offence charged and therefore, Ms. Bora opposed 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 scan copy of the case record, received from the learned Court below with the assistance of Ms. Bora, learned Addl. P.P., Assam.

It is not in dispute that the accused is charge sheeted under Sections 120-B/399 of the IPC, read with Section 20(b) of the NDPS Act and the learned Court below has framed charge against the accused under the aforesaid Sections. Further, it appears that out of the nine witnesses cited in the charge sheet, four witnesses have already been examined by the prosecution side.

As charge has been framed under Section 20(b) of the NDPS Act, the rigors of Section 37 of the NDPS Act will not come into play here in this case, and having regards to the above, and also having regards to the period of detention and the stage of trial, this Court is of the considered opinion that a case for granting bail to the accused is made out.

Accordingly, it is provided that on furnishing a bond of Rs.50,000/- (Rupees fifty thousand) only, with one surety of like amount to the satisfaction of the learned Special Judge, NDPS Act at Dhubri, the accused person, named above, shall be

enlarged on bail, in connection with the Special Case No.219/2022.

In terms of above, this bail application stands disposed of.

JUDGE

Comparing Assistant