

GAHC010244832022



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

Case No. : Bail Appln./3287/2022

BUDHUWA CHOUHAN @ BUDUWA CHOUHAN AND ANR
S/O-LATE DIPCHAND CHOUHAN,
R/O- BHEBARGHAT,
P.S- MANGALDAI, DIST- DARRANG, ASSAM.

TEMPORARY ADDRESS-
3 NO. RAILWAY GATE , LAKHTAKIA,
P.S- PANBAZAR, GUWAHATI

2: MD. MUSARAF ALI @TAKLA
S/O- MUSTAFA ALI
R/O-2 NO. RAILWAY GATE
LAKHTAKIA
P.S- PANBAZAR
DIST- KAMRUP (M)
ASSA

VERSUS

THE STATE OF ASSAM
REP. BY PP, ASSAM

Advocate for the Petitioner : MR S M ABDULLAH P

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN

ORDER

Date : 02-01-2023

Heard Mr. S.M. Abdullah P, learned counsel for the accused and Mr.

BB Gogoi, learned Addl. PP, appearing for the State Respondent, Assam.

This application under section 439 Cr.P.C., is preferred by accused **1. Budhuwa Chouhan @ Buduwa & 2. Md. Musaraf Ali @ Takla**, who have been languishing in jail since 09.11.2022, in connection with **Panbazar PS Case No.270/2022**, under section 21(c)/21(a) of the NDPS Act .

The said case has been registered on the basis of an FIR lodged by SI Pranab Kr. Deka of Panbazar PS on 09.11.2022, to the effect that acting on a tip off, they have apprehended one person, namely, Musaraf Ali @ Takla at Railway Gate No.3, Ushamati and during search of his person, one floral white colour pillow, 149 numbers of small plastic container, filled with brown coloured dry powder material, suspected to be psychotropic substance, was recovered from his possession and also found some plastic vials filled with suspected heroin powder, weighing 188.46 gms, with the plastic vial and on their returning from Railway Gate No.3, they have also found one person namely, Buduwa Chouhan loitering near Railway Gate No.3 and during search, they have recovered one plastic container filled with brown coloured dry powdered materials suspected to be brown sugar weighing 20.40 grams with plastic vials and seized the same preparing seizure list.

Mr. Abdullah, learned counsel for the accused submits that the quantity of drugs recovered from the possession of the accused person is of 208.86 gms, which is lower than the commercial quantity and as such the case is wrongly registered under section 21(c) of the NDPS Act and that the accused is behind the bar for the last 53 days and therefore, it is contended to allow this petition.

On the other hand, producing the case diary before this Court, Mr. BB Gogoi, learned Addl. PP fairly submits that though the case has been

registered under section 21(c) of the NDPS Act, yet the total quantity of contraband substance recovered from the possession of both the accused is lower than the commercial quantity and that the case ought to have been registered under section 21(b) of the NDPS Act, instead of 21(c) NDPS Act.

Mr. Gogoi, further submits that the case is pending for collection of FSL report and the material part of investigation is almost over.

Having heard the submission of learned counsel for both the sides, I have carefully gone through the petition and the documents placed on record and also perused the case diary with the assistance of Mr. BB Gogoi, learned Addl. PP.

It appears from the case diary that the investigation is almost complete and the case is pending for collection of FSL report only. Further, it appears that the quantity of contraband substance, recovered from the possession of both the accused are of 208.86 gms, which is less than the commercial quantity and as such, section 21(c) is not attracted here in this case and the rigors of section 37 NDPS Act is not applicable here in this case.

Having regards to the above, and also having regard to the stage of investigation, further custodial detention of the accused seems to be unwarranted herein this case and therefore, it is provided that on furnishing a bond of Rs.50,000/- each, with a suitable surety of the like amount to the satisfaction of the learned Special Judge, Kamrup (M), Guwahati, the accused be enlarged on bail.

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

Return the case diary.

JUDGE

Comparing Assistant