

GAHC010244872022



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

Case No. : Bail Appln./3297/2022

MD. BASHIR KHAN
S/O MD. NAHAMUDA
SANGAIYUMPHAM
TEHSIL- KHONGJOM, THOUBAL, MANIPUR.

VERSUS

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

Advocate for the Petitioner : S K DEORI

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE AJIT BORTHAKUR

ORDER

Date : 15.03.2023

Heard Mr. M Khan, learned counsel for the accused petitioner as well as Mr. MP Goswami, learned Additional Public Prosecutor, Assam for the State respondent.

By this petition under Section 439 Cr.P.C., the accused-petitioner, namely, **Md. Bashir Khan** has prayed for grant of bail in connection with **Jagiroad P.S. Case No.198/2022** (GR No. 935/2022) under Section under Section 21 ©/29 of the NDPS Act.

The scanned copy of the case records is received.

Mr. M Khan, learned counsel for the accused petitioner, submits that the accused has been in judicial custody for 320 days. Mr. Khan submits that the accused has been suffering from Left Sided Hyelro-Nephrosis along with dilatation of proximal part left ureter and kidney stone for which the jail doctor has referred him to Morigaon Civil Hospital with advise for early surgery. Mr. Khan submits that as no proper treatment is available in Morigaon he may be given liberty to undergo proper medical treatment outside.

Per contra, Mr. MP Goswami, learned Additional Public Prosecutor, submits that charges under Sections 21 ©/29 of the NDPS Act were framed on 13.09.2022 and thereafter, out of 6 witnesses 4 witnesses have been examined so far. Mr. Goswami further submits that 567 grams suspected to be heroin was seized from a three wheeler tempo van which was delivered to one co-accused. In this regard, Mr. Goswami submits that seizure witnesses have implicated the accused. Therefore, Mr. Goswami submits that at the present fag end of trial, the bail application of the accused petitioner may not be considered favourably in view of the restrictions provided in Section 37 of the NDPS Act.

The prosecution case reveals that 516 grams of suspected heroine was recovered and seized from the possession of the present accused petitioner and two other co-accused persons.

It is noticed that the accused has been in judicial custody for 320 days since 29.04.2022.

A perusal of the case record reveals that the charges were framed under Section 21 (c)/29 of the NDPS against the present accused petitioner and 02(two) others vide order, dated 13.09.2022. 567 grams of heroin vide the seizure memo was recovered and seized from the collective possession of the accused persons. The FSL report shows that sample of it gave positive tests for heroin. Four prosecution witnesses have already been examined out of six listed witnesses and there is incriminating material against the accused petitioner.

This Court has considered the medical documents produced by the accused petitioner. The medical officer of District Jail, Morigaon has reported that the accused requires to undergo operation for the aforestated diseases and presently he is not doing well. Therefore, keeping in consideration of his deteriorating health condition, his bail application may be considered.

Accordingly, it is provided that the accused petitioner, named above, shall be released on bail

of **Rs. One Lakh (One Lakh) with 2 (two) sureties** of like amount to the satisfaction of learned **Special Judge (NDPS Act) Morigaon**, subject to the following conditions:

- i) That the accused petitioner shall continue to appear before the learned trial Court on all dates to be fixed from time to time till the case is disposed of; and
- ii) That the accused petitioner shall not directly or indirectly make any inducement, threat or promise to any of the remaining prosecution witnesses; and
- iii) That the accused petitioner shall refrain from committing any similar offences in future, of which he is suspected of commission;
- iv) That out of the two bailors, one must be a government servant subject to verification of the relevant documents, if deemed necessary and after such verification, the learned Court below shall return the original documents retaining legible scanned copy thereof on record for future reference; and
- v) That the accused petitioner and his surities shall produce their Voter Identity Card/ Passport/ Permanent Residential Certificate, whatever is available at the time of submission of the bail bond for satisfaction of the learned court below regarding their identity and address and then return the same retaining photocopy thereof on record.

This disposes of the bail application.

JUDGE

Comparing Assistant