

GAHC010245102022



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

Case No. : Bail Appln./3293/2022

MD. ZAKIRUL ISLAM @ ZAKIR
S/O LATE ABDUL KARIM
C/O RASHIDA KHATUN
R/O VILL AND P.O. JHOWDANGA PART-III, P.S. MANKACHAR,
DIST. SOUTH SALMARA, MANKACHAR, ASSAM, PIN-783131.

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. N ANAND

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE AJIT BORTHAKUR

ORDER

28.06.2023

Heard Mr. N. Anand, learned counsel for the accused petitioner. Also heard Mr. B.B. Gogoi, learned Addl. P.P., Assam appearing for the State respondent.

By this petition under Section 439 Cr.P.C., the accused petitioner, namely **Md. Zakirul Islam @Zakir** has prayed for grant of bail in connection with **Bharalumukh P.S. Case No. 277/2022** under Section **22(c)** of the N.D.P.S. Act [Corresponding to

N.D.P.S. Case No.320/2022 pending in the Court of learned Addl. Sessions Judge No. 5-cum- Special Judge (NDPS Act), Kamrup (M) at Guwahati.]

The scanned copy of case record along with the case diary, as called for, is placed before the Court.

The case relates to recovery and seizure of 10,000 Yuba Tablets containing Methamphetamine from the possession of the accused petitioner.

It is noticed that the accused petitioner has been in judicial custody since 03.10.2022, that is, for 269 days.

Mr. N. Anand, learned counsel for the accused petitioner, submits that the accused has been languishing in jail for 297 days despite being innocent. Mr. Anand further submits that the police after completion of investigation laid a charge-sheet under Section 22(c) of the N.D.P.S. Act against the accused petitioner on 16.12.2022 and thereafter, on having found prima facie material, the learned trial Court has framed a charge accordingly. After framing of the charge, the learned trial Court has examined 2(two) seizure witnesses out of the listed 5(five) prosecution witnesses in the charge-sheet, who have not implicated the accused specifically. Therefore, Mr. Anand submits, that considering the length of detention, the bail application of the accused petitioner may be considered favourably.

Per contra, Mr. B.B. Gogoi, learned Addl. Public Prosecutor, submits that 10,000 Yuba Tablets containing Methamphetamine vide the FSL report were recovered and seized from the exclusive and conscious possession of the accused petitioner, which amounted to commercial quantity under the N.D.P.S. Act. Therefore, Mr. Gogoi submits that in view of the bar contained in Section 37 of the N.D.P.S. Act, the bail application of the accused petitioner cannot be considered favourably.

A perusal of the case record reveals that after completion of investigation, the police submitted the charge-sheet on 16.12.2022 against the accused petitioner and another (absconder). Thereafter, a charge under Section 22(c) was framed against

him vide order, dated 02.03.2023 and then, the learned trial Court examined 2(two) prosecution witnesses out of the listed 5(five) prosecution witnesses in the charge-sheet. The case is presently pending for evidence of the remaining witnesses.

A perusal of the case diary reveals sufficient incriminating material against the accused petitioner subject, of course, to final outcome in trial of the case.

Therefore, this Court is of the opinion that in view of the bar contained in Section 37 of the N.D.P.S. Act, the bail application of the accused petitioner cannot be considered at the present stage of trial of the case.

Accordingly, the bail application of the accused petitioner stands **rejected**.

The accused petitioner is, however, given liberty to file fresh bail application before the learned trial Court at an appropriate stage of trial of the case, if so advised and if such bail application is filed, the learned trial Court shall consider and dispose of the same in accordance with law.

With the above direction, the bail application stands disposed of.

JUDGE

Comparing Assistant