

GAHC010248822023



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

Case No. : Bail Appln./4070/2023

DIPAK TAMANG @ DEEPAK TAMANG
S/O LATE BUDHE TAMANG RESIDENT OF NAMTOLA HATICAMP,
GAHORIKOTA LINE P.S- NAMTOLA DIST- CHARAIDEO, ASSAM

VERSUS

THE STATE OF ASSAM
TO BE REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

Advocate for the Petitioner : MR. J C GOGOI

Advocate for the Respondent : PP, ASSAM

BEFORE
HON'BLE MR. JUSTICE ROBIN PHUKAN

O R D E R

13.12.2023

Heard Mr. B. Islam, learned counsel for the accused and Mr. P. Borthakur, learned Additional Public Prosecutor for the State respondent.

2. This application under Section 439 Cr.P.C. is preferred by the accused

namely, **Shri Dipak Tamang @ Deepak Tamang**, who has been languishing in jail hajot in connection with **Special [N] Case No.21/2022**, arising out of **Namtola P.S. Case No. 31/2022**, under Sections 22(c)/29 NDPS Act, pending before the court of learned Special Judge, Charaideo, since 22.04.2022, for grant of bail.

3. The said case has been registered on the basis of an FIR lodged by S.I. Naba Kumar Changmai of Namtola Police Station, on 20.04.2022. The essence of allegations made in the FIR is that on the same day, at about 12:55 pm, acting on a tip off he has intercepted one auto-rickshaw bearing registration No.AS-33C-0385 and found one driver and two passengers namely Smti. Phulmati Tamang and Prakash Tamang and after conducting search he has recovered 18 boxes of soap case containing suspected brown sugar, weighing 265.18 grams, and seized the same preparing seizure list in presence of witnesses.

4. Mr. Islam, learned counsel for the accused submits that the accused has been languishing in jail hazot for last 594 days and that the accused has been charged under Sections 21(c)/29 of the NDPS Act and out of 12 cited witnesses in the charge sheet, 7 have already been examined and none of them has whispered any word against the accused. Mr. Islam further submits that nothing has been recovered from the possession of the accused and he was arrested only on the basis of statement of the co-accused and that the co-accused has already been enlarged on bail and that the statement of the co-accused is not admissible and therefore, it is contended to allow the petition.

5. On the other hand, Mr. Borthakur, learned Addl. P.P. has vehemently opposed the petition and submits that the contraband substance so recovered from the possession of the co-accused are of commercial quantity and from the

documents placed on record it cannot be said that the accused has succeeded in satisfying the twin requirement of Section 37 of the NDPS Act. Mr. Borthakur further submits that one case, being NDPS Case No.54/2021, under Sections 21(b)/29 of the NDPS Act is pending against the present accused. Mr. Borthakur also submits that it is fact that nothing has been recovered from the possession of the accused. But, the co-accused namely, Smti Rina Tamang from whose possession contraband substance were recovered is his own mother and the seized contraband substance was sent with Rina Tamang to Sonari by the present accused. Mr. Borthakur also submits that 5 other witnesses, including the IO are yet to be examined and as such, it cannot be said that there is no material against the present accused and therefore, it is 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 also perused the scanned copy of the record received from the learned court below.

7. It appears that the accused has been languishing in jail hazot for last 594 days and he has been charged under Section 21(c)/29 of the NDPS Act and out of 12 cited witnesses, 7 have already been examined by the learned court below. Further, it appears that the contraband substance seized from the possession of Rina Tamang is of commercial quantity and she happens to be the mother of the present accused. Also, it appears that 5 witnesses including the IO, are yet to be examined and the present accused is habituated to similar offence and one case, being NDPS Case No.54/2021, under Sections 21(c)/29 of the NDPS Act is pending against him.

8. It is a fact that the witnesses so far examined by the prosecution, does not

disclose culpability of the present accused and only on the basis of statement of the co-accused namely, Rina Tamang, who happens to be the mother of the present accused, from whose possession the contraband substance was seized, the present accused was arrested and as such, his case stands on a different footing.

9. In view of above, this Court is unable to derive its satisfaction that the accused is not guilty of the offence and that he will not commit such offence in future. The twin requirements of Section 37 of the NDPS Act could not be satisfied and therefore, this Court is of the view that this is not a fit case where the privilege of bail can be granted to the present accused and accordingly, the same stands dismissed.

10. However, the learned court below is directed to make an endeavor to complete the trial at the earliest possible time, without being influenced by any of the observation made herein above.

JUDGE

Comparing Assistant