

GAHC010250582022



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

Case No. : Bail Appln./3372/2022

MD. NUR AHMED
S/O LATE ABDUL MATIN
R/O DALONI JURIA
P.S. JURIA,
DIST. NAGAON, ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR M RAHMAN

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

ORDER

Date : 08.02.2023

Heard Mr. R.P. Sharma, learned counsel for the petitioner. Also heard Mr. R.J. Baruah, learned APP appearing for the State.

2. The petitioner, who was arrested on 08.02.2022, is seeking regular

bail under section 439 Cr.P.C. in connection with Special NDPS Case P.S. Case No. 97/2022, arising out of Nagaon P.S. Case No. 180/2022, under sections 21(a)/22(c)/25 of the NDPS Act, pending before the Court of learned Additional Sessions Judge No.3, Nagaon.

3. The learned senior counsel for the petitioner has submitted that in this case, the charge against the petitioner along with other co-accused was framed by order dated 03.09.2022 and till date, none of the prosecution witnesses have been examined. Hence, it is submitted that on the ground of inordinate delay in conducting the trial and considering that the petitioner has been in custody for last 365 days, he has prayed for releasing the petitioner-accused on bail.

4. The learned APP has opposed the prayer for bail.

5. On perusal of the scanned copy of the case diary, which was received from the learned trial Court, it is observed that 28 bottles of cough syrup containing Codeine Phosphate and Chlorpheniramine Maleate Syrup of 100 ml each was seized from the petitioner and the said contraband narcotic drugs are of commercial quantity.

6. Under such circumstances as commercial quantity of contraband narcotic substances were seized from the petitioner, the Court is unable to record its satisfaction that the petitioner is not involved in the offence and that there are reasons to believe that the petitioner is not guilty in the offence or he is not likely to commit any similar offence, which is the mandate of section 37 of the NDPS Act, 1985. Under such circumstances, the Court is not inclined to release the petitioner on bail at this stage.

7. Nonetheless, the Court finds substance in the submission made by the learned senior counsel for the petitioner that although charges were framed by order dated 03.09.2022, as on 25.11.2022, none of the prosecution witnesses have been examined. Under such circumstances, the Court is inclined to request the learned Special Judge-cum-Additional Sessions Judge No.3, Nagaon to expedite the recording of evidence of the prosecution witnesses by directing the concerned police personnel to ensure production of the witnesses on the date fixed.

8. It is hoped that on production of certified copy of this order before the learned trial Court, the learned trial Court shall expedite examination of witnesses preferably within a period of 3 (three) months.

9. With the aforesaid observation, this application stands closed.

10. Registry shall not issue copy (certified/un-certified) of any part of the scanned case diary.

JUDGE

Comparing Assistant