

GAHC010258892022



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

Case No. : Bail Appln./3476/2022

KHAGESWAR BORO AND ANR.
S/O- NOBIN BORO,R/O- VILLAGE PULI NAHARANI,
P.S- NARAYANPUR, DIST- LAKHIMPUR ASSAM,

PRESENT ADRESS-
VILL- DILIPUR,
P.S- BIHPURIA, DIST- LAKHIMPUR, ASSAM

2: RITUL BHUIYAN
S/O- LATE NIJAM BHUIYAN

R/O- VILL NO 2 PARBATIPUR

P.S- BIHPURIA

DIST- LAKHIMPUR
ASSA

VERSUS

THE STATE OF ASSAM
REP. BY PP, ASSAM

Advocate for the Petitioner : MR. B CHOWDHURY

Advocate for the Respondent : PP, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN
ORDER**

03.01.2023

Heard Mr. B. Choudhury, learned counsel for the accused and Mr. B.B. Gogoi, learned Additional Public Prosecutor for the State respondent.

2. This application under Section 439 of the Code of Criminal Procedure, 1973, is preferred by accused, namely, Sri Khageswar Boro and Sri Ritul Bhuiyan, who are languishing in jail hazot since 27.11.2022, in connection with the Bihpuria P.S. Case No. 221/2022, under sections 21[b]/29 of the NDPS Act, for granting bail.

3. The said case has been registered on the basis of one FIR lodged by SI Nipon Gogoi, on 26.11.2022, to the effect that acting on a tip off they have apprehended accused Khageswar Boro and recovered 12.71 grams of suspected heroin kept in shop box from his possession and also apprehended one Ritul Bhuiyan and recovered 12.93 grams of suspected heroin, kept in a shop box, from his possession and as per their statements, the seized heroins were delivered by one Amina Khatun and one Md. Farjul Haque of Nagaon.

4. Mr. Choudhury, learned counsel for the accused submits that the accused are behind the bar for last 38 days and that the quantity of suspected heroin recovered from their possession is 12.71 grams and 12.93 grams, respectively and the same are of intermediate quantity and as such, the bar of section 37 of the NDPS Act will not come into play and that the co-accused have already been arrested by the investigating agency, and therefore, it is contended to allow the petition.

5. On the other hand, Mr. Gogoi, learned Additional Public Prosecutor has produced the case diary before this Court and submits that material part of investigation is almost over and there remains to collect FSL report only.

6. Having heard the submissions of learned Advocates of both 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. Gogoi, learned Additional Public Prosecutor.

7. It appears that both the accused were apprehended on 27.11.2022, and since then, they are languishing in jail hazoot. Further it appears that the quantity of suspected heroin recovered from their possession is 12.71 grams and 12.93 grams, respectively, and admittedly, the same are below commercial quantity and as such, the bar of section 37 of the NDPS Act will not come into play in this case.

8. Having considered the above, and also having considered the stage of investigation, further custodial detention of the accused persons, in the interest of investigation, seems to be unwarranted here in this case. Accordingly, it is provided that on furnishing a bond of Rs. 50,000/- each, with one surety of like amount to the satisfaction of the learned Special Judge, NDPS Act, North Lakhimpur, both the accused be enlarged on bail.

8. In terms of above, this bail application stands disposed of.

9. The case diary be returned

JUDGE

Comparing Assistant