

GAHC010259582022



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

Case No. : Bail Appln./3523/2022

MD. ACHER ALI
S/O- SAIJUDDIN AHMED, R/O- VILL- DHALPUR, P.S- SIPAJHAR, DIST-
DARRANG, ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : J RABHA

Advocate for the Respondent : PP, ASSAM

BEFORE
HON'BLE MR. JUSTICE ROBIN PHUKAN

ORDER

03.01.2023.

Heard Mr. J. Rabha, learned counsel for the accused. Also heard Mr. R.R. Kaushik, learned Addl. P.P., Assam appearing for the State respondent.

This application, under Section 439 of the Code of Criminal Procedure, is preferred by accused, namely, Md. Acher Ali, who is languishing in jail hazot since 06.11.2022, in connection with the Mayong P.S. Case No.121/2022, under Sections 20(b)(ii)B/29 of the NDPS Act, for grant of bail.

The said case has been registered on the basis of an F.I.R., lodged by WSI Kiran Saikia on 06.11.2022 to the effect that acting on a tip off, they have apprehended two persons, namely, Acher Ali and Abbas Ali on 05.11.2022, at about 12:40 P.M., at Hatimuria Kasochila Ghat and conducting search, they have recovered 8.3 Kg and 4.8 Kg. of suspected Ganja from their joint possession.

Mr. J. Rabha, learned counsel for the accused submits that the accused are behind the bar for last 58 days and the total quantity of suspected Ganja, recovered from the joint possession of the present accused along with another co-accused is 13.1 Kg., which is below the commercial quantity and as such, the rigors of Section 37 of the NDPS Act will not come into play and that the accused is ready to cooperate with the investigating agency and therefore, it is contended to allow the petition.

On the other hand, Mr. R.R. Kaushik, learned Addl. P.P., Assam has produced the case diary before this Court and fairly submits that the quantity of suspected Ganja, recovered from the joint possession of the present accused along with another co-accused, is below the commercial quantity. Further, Mr. Kaushik submits that the I.O. has achieves substantial progress in the investigation of the case and also examined the witnesses.

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. Kaushik, learned Addl.

P.P., Assam.

It appears that the accused was arrested on 06.11.2022, and since then, he has been languishing in the jail hajot for last 43 days and admittedly, the quantity of the suspected Ganja, recovered from the joint possession of the accused is below the commercial quantity and as such, the rigors of Section 37 of the NDPS Act will not come into play here in this case. Further, it appears that the I.O. has achieved substantial progress in the investigation and he has examined all the relevant witnesses and there remains to collect the FSL report only.

In view of above facts and circumstances, further custodial detention of the accused seems to be unwarranted here in this case and therefore, this Court is inclined to allow this petition.

Accordingly, it is provided that on furnishing a bond of Rs.50,000/- (Rupees fifty thousand) only, with one surety of like amount to the satisfaction of the learned Special Judge, NDPS Act at Morigaon, the accused person, named above, shall be enlarged on bail, in connection with the Mayong P.S. Case No.121/2022.

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

The case diary be returned.

JUDGE

Comparing Assistant