

GAHC010260472023



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

Case No. : Bail Appln./4222/2023

RAJIT DEORI @ RANJIT DEORI @ JIRAP SINGH DEORI AND ANR.
LATE KHAPSINGH DEORI,
VILL.- NITAI DEORI GAON, P.S.- CHENGCHUP, DIST.- TINSUKIA, ASSAM.

2: GANESH DEORI
LATE PRAHLAD DEORI

VILL.- BALISAPORI
P.S.- CHENGCHUP
DIST.- TINSUKIA
ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY THE P.P., ASSAM.

Advocate for the Petitioner : MR. P J SAIKIA, SR. ADV

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

Date : 20.12.2023

1. Heard Ms. M. Nirola, learned counsel for the petitioners. Also heard Mr. D. Das, learned Additional Public Prosecutor for the State respondent.

2. This application under section 439 of the Code of Criminal Procedure, 1973 has been filed by the petitioners, namely, (1) Shri Rajit Deori @ Ranjit Deori @ Jirap Singh Deori and (2) Shri Ganesh Deori, who were arrested on 07.06.2023 in connection with NDPS Case No. 54(CH)/2023 pending before the Court of learned Special Judge, Tinsukia.

3. The facts relevant for consideration of the instant bail application, in brief is that:

i. On 06.06.2023 one Shri Jugal Deka had lodged an FIR before the Officer-in-Charge of the Sadiya Police Station, *inter-alia*, alleging that on receipt of an information through reliable sources, a naka checking was conducted and during the naka checking 3.320 Kg of opium was recovered from the petitioners. On receipt of the said FIR, Sadiya P.S. Case No. 126/2023 was registered and investigation was initiated. Ultimately, after completion of the investigation, charge sheet was laid against the present petitioner under Sections 18(b)/29 NDPS Act, 1985

4. The learned counsel for the petitioner has submitted that though the charge sheet was laid on 18.09.2023, however charges have not been framed yet.

5. Learned counsel for the petitioner has cited a ruling of the Apex Court in "***Rabi Prakash Vs. The State of Odisha***" reported in **2023 Live Law (SC)/533**, wherein it was observed that "*prolonged incarceration, generally militates against the most precious fundamental right guaranteed under Article 21 of the Constitution of India and in such a situation, the conditional liberty must override the statutory embargo created under Section 37(1)(b)(ii) of the NDPS Act, 1985*".

6. Learned counsel for the petitioners has submitted that the petitioner no.2 is 75 years old and has been languishing behind the bars for the last 6

months and trial has not commenced yet. Though, the Apex Court has observed in the above cited ruling that the prolonged incarceration overrides the embargo of Section 37 of the NDPS Act, 1985, this Court has come to a finding as to whether the incarceration of the petitioners is long enough, so as to come to a conclusion that it outweighs the embargo of Section 37 of the NDPS Act, 1985.

7. Learned counsel for the petitioners has failed to cite any authority where she could show for a period of detention of six months behind the bars in a case involving commercial quantity of contraband, the benefit of overriding the embargo of Section 37 of the NDPS Act, 1985 was granted.

8. On the other hand, learned Additional Public Prosecutor has opposed the grant of bail on the ground that the quantity of opium seized in this case is of commercial quantity and therefore, the embargo of Section 37 of the NDPS Act, 1985 comes into play.

9. I find justification in submissions made by the learned Additional Public Prosecutor and though this Court is of the opinion that prolonged incarceration would override the embargo of Section 37 of the NDPS Act, 1985, however, in the instant case, this Court is of the considered opinion that incarceration of the petitioners named hereinabove is not long enough to give the benefit of such a benefit and therefore, this Court is constrained to dismiss the bail application at this stage.

10. Before parting, as in spite of the fact that the charge sheet has been laid on 18.09.2023, even after three months charges are yet to be framed and as one of the accused person is 75 years of age, the learned Trial Court is hereby directed to dispose of the NDPS Case No. 54(CH)/2023 as expeditiously as possible.

11. With the above observations, this bail application is dismissed.

JUDGE

Comparing Assistant