

GAHC010261502022



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

Case No. : Bail Appln./3549/2022

FAKHRUL ISLAM
S/O LATE MANUHAR ALI
R/O VILL- BORHAWAR, PO.S. MURAJHAR IN THE DISTRICT OF HOJAI,
ASSAM

VERSUS

THE STATE OF ASSAM
TO BE REP. BY THE LEARNED PP, ASSAM

Advocate for the Petitioner : MS SURAYA RAHMAN

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE AJIT BORTHAKUR

ORDER

01.02.2023

Heard Mr. S. Nawaz, learned counsel for the accused petitioner. Also heard Mr. R.J. Baruah, learned Addl. Public Prosecutor, Assam appearing for the State respondent.

By this second petition under Section 439 Cr.P.C., the accused-petitioner, namely **Md. Fakhrul Islam** has prayed for grant of bail in connection with **NDPS Case No. 30(H)/2021** under Section **22(c)** of the NDPS Act read with Section **34** of the IPC, pending in the Court of learned Special Judge (NDPS Act), Hojai.

The earlier bail application of the petitioner being B.A. No. 565/2022 was rejected by this Court vide order, dated 20.07.2022.

The scanned copy of the case record along with case diary, as called for, is placed before the Court.

The case relates to recovery and seizure of 450 kg of ganja contained in 37 numbers of packets while being carried in a truck.

While rejecting the earlier bail application of the accused petitioner, this Court observed as hereinbelow extracted (relevant part)-

“A perusal of the case record along with the case diary, it is revealed that the present accused petitioner is the prime accused in the case, prima facie with the aid of Section 29 of the NDPS Act. The case involves commission of offence in respect of huge commercial quantity of ganja (cannabis). The learned trial court surprisingly framed charge under Section 22 (C) of the NDPS Act only vide order, dated 21.01.2022. Thereafter, the learned court has examined only 01 (one) prosecution witness. Therefore, without examination of the remaining cited material witnesses, it is too early to infer a presumption that the accused petitioner was absolutely innocent, applying the principles laid in the above cited judgments by the learned counsel for the accused petitioner and accordingly in the opinion of this court, granting him of bail may likely to hamper a smooth and fair trial of the case.

For the above stated reasons, the bail application stands rejected.”

Perusal of the updated case record shows that the accused petitioner has been in judicial custody since 06.08.2021, that is, for 544 days. All prosecution witnesses have been examined. At present, the case is pending at the stage of recording of statements under Section 313 Cr.P.C. This Court finds that if the liberty of bail is granted to the accused petitioner at the present stage of trial of the case, early disposal of the case is likely to be hampered.

Therefore, the bail application of the accused petitioner stands rejected with direction to the learned trial Court to record the statement of the accused under Section 313 Cr.P.C. within a period of 1(one) month from the date of this order and

make an endeavour to dispose of the case without further delay.

This disposes of the bail application.

JUDGE

Comparing Assistant