

GAHC010263572022



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

Case No. : Bail Appln./3579/2022

PERISH KUTUM @ GAVASKAR KUTUM
S/O LATE BIRBAL KUTUM
R/O VILL- BHOMA AMLOKHI GAON
P.S. DHAKUAKHANA
DIST. LAKHIMPUR, ASSAM,
PRESENTLY RESIDED AT
VILL- BALABARI, P.S. JONAI
DIST. DHEMAJI, ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MS D BORGOHAIN

Advocate for the Respondent : PP, ASSAM

BEFORE
HON'BLE MR. JUSTICE ROBIN PHUKAN
ORDER

09.01.2023.

Heard Ms. D. Borgohain, learned counsel for the accused. Also heard Ms. SH Bora, learned Addl. P.P., Assam, for the State respondent.

This application under Section 439 of the Code of Criminal Procedure, 1973, is preferred by accused, namely, Perish Kutum @ Gavaskar Kutum, who is

languishing in jail hazot since 09.07.2021, in connection with the Special (NDPS) Case No.18/2021, arising out of Dhakuakhana P.S. Case No.193/2021, under Section 20(c) of the NDPS Act, for grant of bail.

The aforementioned case has been registered on the basis of an FIR, lodged by SI Binod Ch. Dihingia of Dhakuakhana P.S., on 09.07.2021. The allegation made in the FIR against the accused is that 21 Kg and 36 Grams of suspected Ganja recovered, at his instance from the jungle of Bhoma Aamlakhi Gaon and the same was seized by preparing seizure list, in presence of witnesses.

Ms. D. Borgohain, learned counsel for the accused submits that the accused is behind the bar for last 550 days and investigation has already been completed and charge has been framed and some witnesses have also been examined by the learned Court below and his further custodial may not be necessary and therefore, it is contended to allow the petition.

On the other hand, Ms. SH Bora, learned Addl. P.P., Assam, has vehemently opposed the petition. Referring to the evidence of PW.1, the learned Addl. P.P., Assam submits that there is sufficient materials and the evidence of the witnesses, already examined, show the complicity of the accused with the offence alleged in the FIR and therefore, Ms. Bora contended to dismiss the petition.

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 scanned copy of the case record, received from the learned Court below.

From the seizure list dated 09.07.2021, it appears that the I.O. has seized 12 Kg. 36 Grams of Ganja in a Jute Bag and 9 Kg. Ganja in a Plastic Bag, on being

lend and shown by accused Perish Kutum, from Village Bhuma Amlakhi of Kangkan Chapori, under the Dhakuakhana P.S., in presence of the witnesses. It is not in dispute that the quantity of the Ganja, so recovered and seized on being lead and shown by the accused, is of commercial quantity and as per the FSL report, the same give positive test for Cannabis/Ganja.

Since the quantity of Ganja, recovered at the instance of the accused is commercial quantity, the accused has to satisfy the two requirements of Section 37 of the NDPS Act that there is no reasonable ground to believe that: the accused is not guilty of the offence and that he is not likely to commit any offence while on bail. But, from the materials on record and also from the submission of learned counsel for the accused, this Court is unable to derive its satisfaction that there exists any reasonable ground for believing that the accused is not guilty of the offence and that he is not likely to commit any offence, while on bail.

In view of above, this Court is of the opinion that this is not a proper stage and fit case to grant the privilege of bail under Section 439 of the CrPC, to the accused and therefore, the same stands dismissed.

However, the learned Court below is directed to expedite the trial and conclude the same at the earliest possible time and if necessary, by taking recourse to the provision of Section 309(1) of the CrPC.

In terms of above, the bail petition stands disposed of.

JUDGE