

GAHC010265592022



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

Case No. : Bail Appln./3623/2022

1. MIMO AHMED AND ANR
S/O MEHBUB ALI AHMED
R/O VILL- SUKATIKHATA(KHAGRABARI)
P.S. GAURIPUR
DIST. DHUBRI, ASSAM

2: MOMIN AHMED
S/O MEHBUB ALI AHMED
R/O VILL-SUKATIKHATA (KHAGRABARI)
P.S. GAURIPUR
DIST. DHUBRI
ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. M AHMED

Advocate for the Respondent : PP, ASSAM

HON'BLE MR. JUSTICE ROBIN PHUKAN

O R D E R

18.01.2023.

Heard Mr. M. Ahmed, learned counsel for the accused. Also heard Mr. BB Gogoi, learned Addl. P.P., Assam appearing for the State respondent.

This application under Section 439 of the Code of Criminal Procedure, 1973, is preferred by two accused, namely, Mimo Ahmed and Momin Ahmed, who have been languishing in jail hazot since 25.11.2022, in connection with the Gauripur P.S. Case No.414/2022, registered under Sections 22(c)/25 of the NDPS Act, for granting bail.

The aforementioned case has been registered on the basis of an FIR, lodged by SI Kapil Ch. Das on 21.10.2022, to the effect that acting on a tip off, they have apprehended one Tanjul Hoque and Nur Khatun and conducting search in their house, they have found 56 suspected Pyeevon Plus capsule of weighing 36.80 Grams (Approx), 64 Strips suspected Pyeevon Spas Plus Capsule of weighing 1008.37 Grams (Approx) and 73 strips suspected Pyeevon Spas Plus Capsule of weighing 1151 Grams (Approx) and cash amount of Rs.30,000/- and four mobile phones and seized the same in presence of witnesses, preparing seizure list.

Mr. M. Ahmed, learned counsel for the accused submits that the present accused were apprehended on 24.11.2022, and they have been forwarded to jail hazoot on 25.11.2022, and as per the seizure list, Annexure-C, only 0.33 Grams of suspected heroin was recovered from the possession of both the accused persons and that the quantity of the contraband substance recovered from the possession of the accused persons is of small quantity, and the same is not connected with the main offence and recovery of Pyeevon Plus capsule, from the other co-accused and it was not in the same transaction and as such, Mr. Ahmed contended to allow the petition.

On the other hand, Mr. BB Gogoi, learned Addl. P.P., Assam has produced the case diary before this Court and submits that only 0.33 Grams of suspected heroin was recovered from the possession of accused persons and the same is of small quantity and it is not in the same transaction with the recovery of

Pyeevon Plus capsule, from the other co-accused. Further, Mr. Gogoi submits that material part of investigation is almost completed and there remains to collect the FSL report only, in respect of the suspected heroin, recovered from the possession of the present accused persons.

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 Addl. P.P., Assam.

It is not in dispute that 0.33 Grams of suspected heroin was recovered from the possession of accused persons on 24.11.2022 and admittedly the quantity of the contraband substance recovered from the possession of the accused persons is of small quantity. The recovery of the aforesaid quantity of the contraband substance was made after more than a month of the first recovery of contraband substance from the possession of the co-accused on 21.10.2022. Therefore, it cannot be said that it was recovered in the same transaction with the first recovery and seizure and as such, this Court is of the view that Section 22(c) of the NDPS Act, is not applicable in the case of present accused persons.

Having considered above, and also considering the submissions of learned Advocates of both sides as well as the materials collected so far in the case diary, further custodial detention of the accused seems to be not warranted, here in this case and accordingly, it is provided that on furnishing a bond of Rs.50,000/- (Rupees Fifty Thousands) each, with one surety of like amount, to the satisfaction of learned Special Judge, NDPS Act, Dhubri, the accused persons, named above will be enlarged on bail, in connection with the Gauripur P.S. Case No.414/2022.

In terms of above this B.A. stands disposed of.

The case diary be returned.

JUDGE

Comparing Assistant