

GAHC010271462022



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

**Case No. : Bail Appln./3683/2022**

PRADIP SAIKIA AND ANR.  
S/O LATE DEBEN SAIKIA,  
VILL.- JYOTI NAGAR,  
P.S.- DHEMAJI,  
P.O.- ARADHAL,  
DIST.- DHEMAJI, ASSAM, PIN- 787057.

2: HEMANTA BORAH  
S/O HOREN BORAH  
VILL.- JYOTI NAGAR  
P.S.- DHEMAJI  
P.O.- ARADHAL  
DIST.- DHEMAJI  
ASSAM  
PIN- 787057

VERSUS

THE STATE OF ASSAM  
THROUGH THE P.P., ASSAM.

**Advocate for the Petitioner : MR. U DUTTA**

**Advocate for the Respondent : PP, ASSAM**

**BEFORE**  
**HON'BLE MR. JUSTICE ROBIN PHUKAN**

**ORDER**

19.01.2023.

Heard Mr. U. Dutta, learned counsel for the accused and also heard Ms. SH Bora, 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 the two accused, namely, Pradip Saikia and Hemanta Borah, who have been languishing in jail hazoot since 28.06.2022, in connection with Special (NDPS) Case No.10 (DH)/2022, under Sections 20(b)(ii)C/29 of the NDPS Act, pending before the Court of learned Special Judge, Dhemaji, arising out of Gogamukh P.S. Case No.68/2022, for granting bail.

The above noted case has been registered on the basis of an FIR, lodged by SI Umesh Ram on 27.06.2022, to the effect that acting on a tip off, they have intercepted one Vespa Piaggio VXL scooty, at the Railway Station Road, in front of Holowdunga Post Office and recovered four packets of suspected Ganja and apprehended two accused namely, Pradip Saikia and Hemanta Borah and seized the same preparing seizure list, in presence of witnesses.

Mr. U. Dutta, learned counsel for the accused submits that the accused were arrested on 28.06.2022, and since then they have been languishing in jail hajoot and that there are contradictions in the seizure list and also in the FIR, in respect of the quantity of Ganja, recovered from the possession of the accused persons and that the accused are innocent and they are ready to face the trial 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 and submits that the I.O. has laid charge sheet against both the accused and the learned Court below has already framed charge

against both the accused persons, under Sections 20(b)(ii)C/29 of the NDPS Act and examined one witness and the said witness has implicated the accused persons with the offence charged and that the quantity of Ganja recovered from their possession is of commercial quantity 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 case record, received from the learned Court below.

It appears from the record of learned Court below that both the accused have been charged under Sections 20(b)(ii)C/29 of the NDPS Act and one witness has already been examined by the learned Court below. Since the quantity of Ganja, recovered from the possession of the accused persons are of commercial quantity, the accused persons have to satisfy the requirement of Section 37 of the NDPS Act and from the materials available in the record of learned Court below and also from the submission of learned counsel for the accused and the documents placed on record, this Court is unable to derive its satisfaction that the accused is not guilty of the offence and that he will not likely to commit similar offence while on bail.

Having regards to the above, this Court is of the opinion that this is not a fit case to grant the privilege of bail under Section 439 of the CrPC and therefore, this petition stands dismissed.

However, the learned Court below is directed to expedite the trial and conclude the same at the earliest possible time and if possible, within a period of three months from today, by taking recourse to the provision of Section 309(1) of the CrPC, without being influenced by any of the observation made here in above,

as the same is made only for the purpose of disposing of the present bail application only and not on the merit of the case.

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

JUDGE

**Comparing Assistant**