

GAHC010034392024



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

Case No. : Bail Appln./498/2024

UMAKANTA KALITA @ UMA KT. KALITA @ MAINA KALITA
S/O SABHAI KALITA @ SAVAI KALITA
R/O VILL- MAKRACHUK, P.S. DHAKUAKHANA
DIST. LAKHIMPUR, ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. P BORDOLOI

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI

ORDER

Date : 29.05.2024

Heard Mr. P. Bordoloi, learned counsel for the accused-petitioner as well as
Mr. D.P. Goswami, learned Additional Public Prosecutor for the State.

2. This is an application filed under **Section 439 Cr.P.C.**, seeking bail by the accused-petitioner, namely, **Umakanta Kalita @ Uma Kt. Kalita @ Maina Kalita**, in connection with **Special Case (NDPS) No. 28/2023**, registered under **Section 20(C)/29 of NDPS Act**, pending in the court of learned **Additional Sessions Judge, FTC, Lakhimpur, North Lakhimpur, Assam**.

3 It has been submitted by the learned counsel for the accused/petitioner that the actual fact of the case is that on the day of the incident, during naka checking, the police personnel apprehended one Nikul Doley and 2.700 gm suspected ganjga was recovered from him. It is also submitted that the said Nikul Doley implicated the present petitioner. When an anti drug drive was carried out in the area of the petitioner's house, some unknown persons had thrown the alleged suspected ganja near the house of the petitioner which was recovered from his house weighing about 22 kg.

4. The learned counsel for the petitioner further submitted that the petitioner has been detained in custody for last 294 days since his arrest on 11.08.2023. It is also submitted that only 4(four) witnesses have been examined out of 18(eighteen) witnesses. As the petitioner has no knowledge about the alleged contraband item and also considering the length of detention, the petitioner may be enlarged on bail.

5. In support of his submission, the learned counsel for the petitioner has placed reliance on the following case laws-

- (i) Rabi Prakash v. The State of Odisha, reported in 2023 LiveLaw (SC) 533.

(ii) Mohd. Muslim @ Hussain vs. State (NCT of Delhi), reported in AIR 2023 SC 1648.

6. On the other hand, Mr. Goswami, learned Additional Public Prosecutor for the State submits that the charge was framed on 09.10.2023 and the case is fixed for evidence of witnesses. It is true that only 4(four) witnesses have been examined out of 18(eighteen) witnesses. The case is at the initial stage of trial. Therefore, considering the nature of offence, bail prayer of the petitioner may not be considered at this stage.

7. I have considered the submissions made by the learned counsel for the parties. I have also perused the trial court record.

8. The NDPS Act is a special Act with an inbuilt mechanism in the form of Section 37 relating to bail. As the commercial quantity of ganja was recovered from the house of the petitioner. It is true that only 4(four) witnesses have been examined in the case out of 18 (eighteen) witnesses, however, it also appears that commercial quantity of ganja was kept concealed in the house of the petitioner.

9. The Hon'ble Supreme Court in the case of ***Chandrakeshwar Prasad Vs. State of Bihar***, reported in ***(2016) 9 SCC 443***, has laid down in clear terms that interest of the society is a relevant factor to be taken into account while considering the prayer for bail. For ready reference, the relevant paragraphs of the said case are extracted herein below:

"10. This Court in Rajesh Ranjan Yadav @ Pappu Yadav v. CBI through its Director (2007) 1 SCC 70 balanced the fundamental right to individual liberty with the interest of the society in the following terms in paragraph 16 thereof:

"We are of the opinion that while it is true that Article 21 is of great importance because it enshrines the fundamental right to individual liberty, but at the same time a balance has to be struck between the right to individual liberty and the interest of society. No right can be absolute, and reasonable restrictions can be placed on them. While it is true that one of the considerations in deciding whether to grant bail to an accused or not is whether he has been in jail for a long time, the court has also to take into consideration other facts and circumstances, such as the interest of the society."

10. On consideration of the matter in its entirety, this Court is of the view that this is not a fit case for grant of bail to the accused/petitioner, at this stage. Therefore, prayer for bail is **rejected**.

11. However, the learned Special Judge, Lakhimpur, North Lakhimpur is directed to expedite the matter for examining the remaining witnesses as early as possible and take much initiative to dispose of the matter.

12. The bail application stands disposed of.

JUDGE

Comparing Assistant