

GAHC010040922024



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

Case No. : Bail Appln./591/2024

MD. DILWAR KHAN @ MD. DILBAR KHAN
S/O LATE AZIZ KHAN
R/O NO. 2, HARIPUR
BOHORIHAT, P.S. TARABARI
DIST. BARPETA, ASSAM

VERSUS

THE STATE OF ASSAM
REP BY THE PP, ASSAM

Advocate for the Petitioner : MR. C K NATH

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

Date : 09.04.2024

1. Heard Mr. S. Munir, learned for the petitioner. Also heard Mr. B. Sharma, learned Additional Public Prosecutor for the State.
2. This application under Section 439 of the Code of Criminal Procedure, 1973 has been filed by the petitioner, namely, Md. Dilwar

Khan @ Md. Dilbar Khan, who has been detained behind the bars since 25.06.2023, in connection with NDPS Case No. 201/2023, under Section 21(c)/29(1) of the NDPS Act, 1985 which is pending in the Court of the learned Additional District and Sessions Judge No.2, Kamrup(M), at Guwahati.

3. The gist of accusation in this case is that on 25.06.2023, Mr. Vikram Basumatary had lodged the FIR before the Officer In-charge of S.T.F. Police Station, inter alia, alleging that 1kg and 280gm of heroin were recovered from the possession of the present petitioner.

4. On receipt of the said FIR, S.T.F. P.S. Case No.04/2023, was registered and an investigation was initiated.

5. Ultimately, on completion of the investigation, charge-sheet was laid on 04.12.2023 against 3 accused persons including the present petitioner under Section 21(c)/29(1) of the NDPS Act, 1985.

6. It is also submitted by learned counsel for the petitioner that 2 other co-accused persons, against whom charge-sheet was laid were shown as absconders and till now the charges are not yet framed and, therefore, on the ground for delay, prayer for bail has been made.

7. On the other hand, Mr. B. Sharma, learned Additional Public Prosecutor, has submitted that since this case involves commercial quantity of contraband, the embargo of Section 37 of the NDPS Act is applicable and hence, he has opposed the grant of bail to the present petitioner.

8. I have considered the submissions made by the learned counsel for both the sides, as well as perused the materials available on record. Although, it appears that the petitioner has been detained behind the

bars since 25.06.2023 and charges are yet to be framed. However, the fact remains that the contraband seized i.e., heroin is of commercial quantity and, therefore, embargo of section 37 of the NDPS Act, 1985 is applicable in this case.

9. It is also a fact that prolonged incarceration may override the embargo to section 37 of the NDPS Act, 1985.

10. However, in the instant case, since the petitioner has been detained behind the bars for less than 1year and considering the quantity of the contraband seized in this case the period of detention under-gone by the present petitioner, in the considered opinion of this court, is not long enough to override the embargo to Section 37 of the NDPS Act, 1985.

11. Hence, the prayer for bail of the present petitioner is rejected.

12. However, before parting, it is hereby directed that the trial court shall make all endeavors to procure the attendance of the absconding co-accused and shall, alternately also look into the options of splitting up of the case of the present petitioner, so that the trial of the present petitioner, who has been incarcerated since 25.06.2023, may be completed at the earliest.

13. With above observations, the bail application is disposed of.

JUDGE