

GAHC010047662024



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

Case No. : Bail Appln./668/2024

SUNIRAM KISKU AND ANR.
S/O MADAN KISKU
R/O VILL- NEPALPARA
GRAZING, P.S. UDALGURI
DIST. UDALGURI (BTAD), ASSAM
PIN-784509

2: BERNATH BESHRA
S/O BENJAMIN BESHRA
R/O VILL- GOMIDANGA
(GORBI)
P.S. UDALGURI
DIST. UDALGURI (BTAD)
ASSAM
PIN-78450

VERSUS

THE STATE OF ASSAM
REP BY THE PP, ASSAM

Advocate for the Petitioner : MR. A PAUL

Advocate for the Respondent : PP, ASSAM

**BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI**

ORDER

Date : 21-03-2024

Heard Mr. A. Paul, learned counsel for the accused/petitioners and Ms. A. Begum, learned Additional Public Prosecutor for the State.

2. This is an application made under **Section 439 Cr.P.C.**, seeking bail by the accused/petitioners, namely, (i) **Suniram Kisku** and (ii) **Bernath Beshra**, in connection with NDPS Case no. 17/2022 arising out of **Rangia G.R.P.S. Case No. 16/2022**, registered under **Sections 20(b)(ii)(C)/29** of the **Narcotic Drugs and Psychotropic Substances Act, 1985**, pending in the Court of Special Judge (NDPS), Rangia.

3. It is submitted by the learned counsel for the accused/petitioners that the quantity of narcotic drugs i.e. ganja, which was recovered from the possession of the accused/petitioner no. 1, Suniram Kisku was about 10.344 Kgs, which is not commercial quantity and from Bernath Beshra is about 10.576 Kgs, which is also less than commercial quantity. It is submitted that charge has been wrongly framed under Section 22C against the petitioners. The quantity of contraband cannot be clubbed together to retain the accused in jail for subsequent period. It is also submitted by the learned counsel for the accused/petitioners that altogether five accused persons are facing the trial in connection with this case out of which bail was granted to three accused persons. However, bail application was filed before the trial court for the present two petitioners which was rejected by the learned trial court without showing any grounds. It is also submitted that the accused/petitioners are in custody since 06.04.2022. Learned counsel for the accused/petitioners has also pointed out that the prosecution

has failed to examine P.W.9 though 13 days had passed and considering the period of detention as well as the background of the case, the accused/petitioners may be enlarged on bail.

4. On the other hand, learned Additional Public Prosecutor submits that out of the ten witnesses, 8 witnesses have been already examined so far, therefore, at this stage, bail may not be granted as commercial quantity of narcotics have been recovered from the possession of the accused-petitioners.

5. I have perused the trial court records. It reveals that eight witnesses have already been examined but prosecution has failed to examine P.W.9 i.e. the Forensic Expert though 13 days have been passed to examine the said witness. There is no explanation being recorded by the trial court as to why the prosecution has failed to examine this witness of the case. It appears from the trial court records that three co-accused were granted bail by the trial court and though bail application was filed to consider the bail prayer for the present two accused/petitioners, the bail prayer was rejected by the trial court without showing any such plausible ground.

6. In view of the above and considering the length of detention of the accused/petitioners, this Court is inclined to grant bail to the accused/petitioners.

7. Accordingly, the accused/petitioners, named above, shall be released on bail in connection NDPS Case no. 17/2022 arising out of with **Rangia G.R.P.S. Case No. 16/2022**, registered under **Sections 20(b)(ii)(C)/29** of the **Narcotic Drugs and Psychotropic Substances Act, 1985**, on furnishing bail bond of **Rs.50,000/- each** with **a suitable surety each** of the like amount, to the satisfaction of learned Special Judge, NDPS, Rangia.

8. The direction for bail is further subject to the conditions that the accused-petitioners:

(a) shall not leave the territorial jurisdiction of learned Special Judge, NDPS, Rangia, without prior written permission from him/her;

(b) shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer.

9. In terms of the above, this bail application stands disposed of.

10. Send back the case diary.

JUDGE

Comparing Assistant