

GAHC010083022024



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

Case No. : Bail Appln./1209/2024

ANOWAR HUSSAIN @ BIHARI
S/O LATE KHAYBAR ALI
R/O GERAMARI PT.V(BAIRGAON)
P.S. GAURIPUR
DIST. DHUBRI, ASSAM

VERSUS

THE STATE OF ASSAM
REP BY THE PP, ASSAM

Advocate for the Petitioner : MRS. K DEVI

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

ORDER

Date : 21-05-2024

- 1.** Heard Mrs. K. Devi, learned counsel for the petitioner.
- 2.** The petitioner namely, Anowar Hussain @ Bihari has filed this application under Section 439 Cr.PC with prayer for bail as he is behind bars since 24.07.2022 in

connection with Special Case No. 16/2023 arising out of Gouripur P.S. Case No. 259 of 2022 registered u/s 22(c) and 29 of the NDPS Act.

3. Heard Mr. B.B. Gogoi, learned Addl. PP., Assam

4. The FIR unfolds that a secret information was received by the investigating team on 29.05.2022 that one person namely Anowar Hussain @ Bihari was about to supply contraband at NH 31 in Alamganj Bazaar. After registering a G.D. Entry, the investigating team set off for the place of occurrence and laid ambush near Dynamic Academy. As soon as the petitioner and the co-accused noticed the investigating team, they tried to escape. They were riding a bike. The police team pursued them and apprehended Nazimul Haque. The investigation was conducted as per proper procedure. While searching Nazimul Haque, one blue coloured plastic soap case containing a plastic pouch filled with Heroin weighing 13.84 grms. was seized from his possession, and one black and red coloured Pulsar bike bearing Registration No. AS 17-M-0403 was seized from his possession along with a mobile handset. The other person who fled the scene was Ali Hussain and he was later apprehended by the police. During investigation, the present petitioner was arrested and forwarded to custody on 24.07.2022 and since then he is behind bars.

5. It is submitted on behalf of the petitioner, that the co-accused has been granted bail vide order dated 05.09.2022 of this Court in connection with BA No. 2208 of 2022 and vide order of this Court dated 16.02.2024 in connection of Bail Application No. 219 of 2024, the petitioner has prayed for bail on the grounds of parity.

6. On the contrary, it is submitted by the learned Addl. PP that during investigation 38 bottles of cough syrup were seized from the co-accused Nur Mohammad Sk and thus it is apparent that the petitioner and the co-accused are habitual drug peddlers.

7. I have considered the submissions at the Bar with circumspection.

8. The co-accused Nur Mohammad Sk in connection with Bail Application No. 219 of 2024 was granted bail vide order dated 16.02.2024 as he was behind bars for 560

days, but not a single witness was examined and trial did not commence at that time as NBWA was issued against the other accused named in the FIR. However, this case is proceeding at a regular pace now. This case is fixed for evidence. The circumstance of this case is distinguishable. Charge has been framed and this case is fixed for evidence. It is true that there are 16 enlisted witnesses but not a single witness has been examined by the trial Court, but the non-examination of the witnesses by the trial Court does not entitle the petitioner to bail. The co-accused has procrastinated the case. The prosecution and the Court have not protracted the trial. The co-accused has been evading appearance and NBWA was issued against the co-accused Nazimul Haque who has finally surrendered before the trial Court on 08.02.2024 and thus trial has commenced thereafter. The double pronged conditions u/s 37 of the NDPS Act also acts as an embargo.

9. The learned Addl. PP has raised objection stating that at this juncture this cannot be considered to be a case where evidence is lacking against the accused because not a single witness has been examined. As this is a serious offence, the length of detention of the petitioner cannot be considered to be a ground to admit the petitioner to bail.

10. In view of my foregoing discussions, petition is rejected at this stage with a liberty to the petitioner to file a fresh petition in case trial is further procrastinated by the trial Court.

11. The trial Court is directed to expedite the trial for speedy disposal of the case.

JUDGE

Comparing Assistant