

GAHC010099692024



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

Case No. : Bail Appln./1441/2024

SAIDUL BASAR
S/O ABUL KHER
R/O VILL-SOBHAPUR
P.S. SONAMURA
DIST. SIPAHIJALA, TRIPURA

VERSUS

THE STATE OF ASSAM
REP BY THE PP, ASSAM

Advocate for the Petitioner : MR. P K SAHARIA
Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI

ORDER

10.06.2024

1. Heard Mr. P. K. Saharia, learned counsel appearing for the accused petitioner as well as Mr. D. P. Goswami, learned Addl. P.P., Assam appearing for the State respondent.
2. By filing this petition under Section 439 Cr.P.C., the accused-petitioner, namely, **Saidul Basar**, has prayed for grant of bail in connection with **NDPS Case No. 305/2022 arising out of Paltanbazar PS Case No. 375/2022** under

Sections **20(b)(ii)(C)/29 of NDPS Act.**

3. The brief facts of the case is that 01.08.2022, the O/C Paltanbazar PS received an information from reliable source that some persons were illegally possessing huge amount of ganja for selling in room No. 204 and 206 of Hotel Sumiya under Paltanbazar PS. On receipt of the information, some police personnel visited the hotel Sumiya and searched room No. 204 and 206 and recovered five numbers of plastic packets having suspected ganja weighing about 59.700 kg. The contraband was seized and the accused petitioner along with other co-accused were arrested.

4. It is submitted by the learned counsel for the petitioner that the accused petitioner has been detained in custody for last two years since his arrest on 01.08.2022 and out of six witnesses only one witness was examined by the trial court. It is further submitted that the PW-1 did not say anything regarding recovery of ganja from the possession of the present petitioner. In his cross-examination, PW-1 has stated that he did not know what articles were seized by the police and from whom it was seized.

5. According to learned counsel for the petitioner, PW-1 is the seizure witness and he did not support the prosecution case. Hence, considering the length of detention, the petitioner may be enlarged on bail.

6. Per contra, Mr. D. P. Goswami, learned Additional Public Prosecutor has submitted that commercial quantity of ganja was recovered from the possession of the petitioner along with the co-accused. They kept such contraband in the hotel Sumiya for the purpose of selling. Learned Additional Public Prosecutor though admitted that only one witness was examined in connection with the case but according to him which is not the ground to release the accused on bail.

7. I have considered the submissions of the learned counsel for the parties. As

it appears from the FIR that five persons were found in the hotel Sumiya at room No. 204 and 206. On being searched of the two hotel rooms, 59.700 kg of ganja were recovered but it is not reflected in the FIR or from the seizure list specifically from whom such contraband was recovered.

8. It also appears from the trial court record that out of six witnesses only one witness was examined within such two years. The said witness was examined on 30.05.2023. For last one year, prosecution has failed to produce any witness. Order sheet also does not reflect any such initiative taken by the trial court to dispose of the matter early. In the case of *Dhiraj Kumar Sukla vs State of Uttarpradesh* reported in *Special Leave to Appeal* (Crl. No. 6690/2022) Hon'ble Supreme Court observed as follows:-

“ It is true that the quantity recovered from the petitioner is commercial in nature and the provision of Section 37 of the Act may ordinarily be attracted. However, in the absence of criminal antecedents and the fact that the petitioner is in custody for two and half years, we are satisfied that the conditions of Section 37 of the Act can be dispensed with at the stage ”

9. Taking into consideration the fact that the petitioner is in custody for almost two years and there being no likelihood of completion of trial in near future which fact cannot be controverted by the learned counsel appearing for the state, this Court is inclined to grant him bail.

10. Accordingly, the petitioner, named above, shall be released on bail, on furnishing bail bond of **Rs.1,00,000/-** with **two suitable sureties** of the like amount out of which one of the surety must be a government employee of Assam, to the satisfaction of **learned Additional District and Sessions Judge, No.5 cum Special Judge, Kamrup(M)**.

The direction for bail is further subject to the conditions that the petitioner:

(a) shall not leave the territorial jurisdiction of the learned trial court

without prior written permission from him/her till disposal of the case.

11. The learned Additional District and Sessions Judge, No.5 cum Special Judge, Kamrup(M), is at liberty to impose any other condition(s) as it deems fit and proper at the time of releasing the accused/petitioners on bail to procure his attendance during trial.

12. The observation made above, shall confine for the purpose of disposal of this bail application only and shall not in any way affect the proceeding of the trial.

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

JUDGE

Comparing Assistant