

GAHC010141222023



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

Case No. : I.A.(Crl.)/561/2023

MOKLESUR RAHMAN
S/O SADAM ALI, RESIDENT OF VILLAGE AMERBHITA, CHOTO BASHJANI,
PS AND DIST DHUBRI, ASSAM

VERSUS

THE STATE OF ASSAM AND ANR.
REPRESENTED BY PP ASSAM

2:SI SAFIQUUL HUSSAIN
S/O MD. NAZMUL HUSSAIN

RESIDENT OF VILLAGE SORBHOG
PS SORBHOG DIST BARPETA
ASSAM 78131

Advocate for the Petitioner : MR. M AHMED

Advocate for the Respondent : PP, ASSAM

Linked Case : Crl.A./228/2023

MOKLESUR RAHMAN
S/O SADAM ALI

RESIDENT OF VILLAGE AMERBHITA
CHOTO BASHJANI
PS AND DIST DHUBRI

ASSAM

VERSUS

THE STATE OF ASSAM AND ANR.
REPRESENTED BY PP ASSAM

2:SI SAFIQUUL HUSSAIN
S/O MD. NAZMUL HUSSAIN

RESIDENT OF VILLAGE SORBHOG
PS SORBHOG DIST BARPETA
ASSAM 781317

Advocate for : MR. M AHMED
Advocate for : PP
ASSAM appearing for THE STATE OF ASSAM AND ANR.

BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI

ORDER

Date : 23.04.2024

Heard Mr. M. Ahmed, learned counsel for the applicant. Mr. D.P. Goswami, learned Public Prosecutor for the State/respondent No.1.

2. This is an application under Section 389 Cr.P.C. praying for granting bail by suspending sentence pending appeal to the applicant in connection with the judgment dated 25.05.2023 and order dated 29.05.2023 passed by the learned Special Judge (Addl.), Dhubri, Assam, in connection with Special Case No. 219/2022, whereby convicting the accused/applicant under Section 22(b) of NDPS Act, 1985 and sentenced him to undergo rigorous imprisonment for 5(five) years and to pay a fine of Rs.50,000/-, in default to undergo rigorous

imprisonment for another 6 months.

3. The learned counsel for the applicant submits that there is violation of Section 42(2) of NDPS Act which is mandatory in nature, in spite of fact that prosecution could not follow the provision. It is also submitted that the applicant has been convicted under Section 22(b) of NDPS Act, 1985 and sentenced to undergo rigorous imprisonment for 5(five) years, out of which the applicant has already been completed two years detention in jail hazot.

4. It is also submitted that there are lots of contradictions in the evidence of the witnesses and there is every possibility of acquittal of the applicant in the case. Considering these aspects, the applicant be released on bail during pendency of the appeal.

5. On the other hand, Mr. Goswami, learned Additional Public prosecutor submits that there is sufficient incriminating materials in the case. However, on the basis of the sentence imposed on the petitioner, bail may be granted during pendency of the appeal without going into the merits of the case.

6. I have considered the submissions made by the learned counsel for the parties as well as perused the judgment of the learned trial court.

7. Considering the submission of learned counsel for the parties, without going into the merit of the case, prayer of the applicant is allowed.

8. Accordingly, the accused-applicant, named above, shall be released on bail suspending the sentence during appeal in connection with Special Case No. 219/2022, under Section 22(b) of NDPS Act, 1985, subject to the following conditions :

(i) The applicant shall furnish a bail bond of Rs.30,000/- with two suitable sureties each of the like amount to the satisfaction of the learned Special Judge (Addl.), Dhubri, Assam.

(ii) The learned Special Judge (Addl.), Dhubri, Assam will be at liberty to impose any condition(s) while releasing the applicant on bail.

9. Nothing in this order shall be construed as an expression of opinion on the merits of the pending criminal appeal.

10. In view of the above, interlocutory application stands disposed of.

JUDGE

Comparing Assistant