

GAHC010157122023



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

Case No. : Bail Appln./2530/2023

AJIBOR RAHMAN MOLLAH @ AJIBAR RAHMAN MOLLAH
S/O LT. LALCHAN MOLLAH
R/O VILL- JHALER ALGA PT.I
P.S. GAURIPUR
DIST. DHUBRI, ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. D GAGAI

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN
ORDER

01.04.2024

Heard Mr. D.K, Baidya, learned counsel for the accused and Mr. R.J. Barua, learned Additional Public Prosecutor for the State respondent.

2. This application under Section 439 Cr.P.C. is preferred by two accused namely, **Ajibor Rahman Mollah @ Ajibar Rahman Mollah**, who has been languishing in jail hazot since 10.04.2023, in connection with **Gauripur P.S. Case No. 126/2023**, under Section 20(c) of the NDPS Act.

3. It is to be noted here that the aforementioned case has been registered on the basis of an FIR lodged by S.I. Kapil Ch. Das of Gauripur Police Station, on 22.02.2023. The essence of allegation made in the aforesaid FIR is that on that day, at about 6:00 p.m., ASI Saha Alom Azad, Traffic In-Charge of Gauripur Traffic Branch, received one secret information over phone that in a white coloured Bolero vehicle, bearing Registration No.AS-12R-7288, suspected Ganja was being carried from Asharikandi to Gauripur. On being entrusted, the informant along with staff proceeded to the village and having seen the police party, the driver and the boarded persons left the Bolero vehicle, bearing Registration No.AS-12R-7288 on the PWD road of Charjugipara. Thereafter, in presence of witnesses search was conducted and found 14 nos. of packets suspected to be cannabis weighing 82.724 kg and seized the same in presence of witnesses.

4. Mr. Baidya, learned counsel for the accused submits that the accused was arrested on 10.04.2023, and since then he has been languishing in jail hazot for last 356 days. Mr. Baidya further submits that the accused has been standing trial and that out of 12 witnesses cited in the charge sheet, 4 witnesses have already been examined by the prosecution side, but, none of the 4 witnesses have whispered any word against the present accused. Mr. Baidya further submits that except the statement of the co-accused and his own statement, no other material is available against the present accused. Mr. Baidya also submits that this Court was pleased to grant privilege of bail to two other co-accused namely, Nil Kamal Biswas @ Neel Kamal Biswas and Rahul Biswas, in BA No. 3961/2023, and that the present accused stands in the same footing with the co-accused in the aforesaid bail application and that he will appear before the learned court below on each and every date and will cooperate with the trial and therefore, it is contended to allow the petition.

5. On the other hand, Mr. Barua, learned Additional Public Prosecutor referring to the materials available in the scanned copy of the record, received from

the learned court below and also in the case diary, fairly submits that the 4 witnesses, who have already been examined before the learned court below, have not implicated the present accused with the offence alleged in the FIR and that except his own statement and the statement of the co-accused, no other material is available against the present accused. However, Mr. Barua pointed out that the informant in the FIR clearly stated that on the basis of secret information, the vehicle was intercepted and the contraband substances were recovered and the driver was also apprehended and 8 witnesses are yet to be examined and therefore, it is contended to dismiss the petition. However, Mr. Barua further submits that nothing has been recovered from the possession of the present accused

6. Having heard the submissions of learned Advocates of both sides, I have carefully gone through the petition as well as the documents placed on record and also perused the scanned copy of the record along with the case diary.

7. It appears that the accused was arrested on 10.04.2023, and since then he has been languishing in jail hazot for last 356 days. Further, it appears that the accused was charged under Section 20(c) of the NDPS Act and out of 12 witnesses cited in the charge sheet, 4 witnesses have already been examined by the prosecution side, but, none of the 4 witnesses have whispered any word against the present accused. Further, it appears that from the statement of the remaining witnesses, recorded under Section 161 of the Cr.P.C., by the I.O, none of them also whispered any word against the present accused. It also appears that two other co-accused have already been granted privilege of bail, by this Court, vide order dated 07.03.2024, in B.A. No. 3961/2023. Also, it appears that the contraband substances seized here in this case is of commercial quantity, but, in view of the facts and circumstances on the record, this Court of the view that the embargo under Section 37 of the NDPS Act will not come into play, against the present accused.

8. Under the aforementioned facts and circumstances, this Court is inclined

to allow this petition. Accordingly, it is provided that on furnishing a bond of Rs. 50,000/- only, with one surety of like amount to the satisfaction of the learned **Special Judge, NDPS, Dhubri**, the accused be enlarged on bail.

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

10. It is made clear that the observation made herein above, is only for the purpose of disposing of this bail application, not on the merit of the case.

JUDGE

Comparing Assistant