

GAHC010162922023



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

Case No. : Bail Appln./2610/2023

ROSTAM ALI @ JAHIR ALI AND ANR
S/O LT. SUKUR ALI
VILL- MADHUSAULMARI PT.II
P.S. GAURIPUR
DIST. DHUBRI, ASSAM

2: PINTU ROHMAN
S/O AJIJUR RAHMAN
VILL- MADHUSAULMARI PT.II
P.S. GAURIPUR
DIST. DHUBRI
ASSA

VERSUS

THE STATE OF ASSAM
REP BY THE PP, ASSAM

Advocate for the Petitioner : MR. L R MAZUMDER, MR. A Z AHMED

Advocate for the Respondent : PP, ASSAM,

BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI

ORDER

Date : 18.09.2024

Heard Mr. A.Z.Ahmed, learned counsel for the accused-petitioners as well as Mr.

B.Sharma, learned Additional Public Prosecutor for the State respondent.

By filing this petition under Section 439 CrPC, the petitioners, namely, **1. Rostam Ali @ Jahir Ali** and **2. Pintu Rahman** have prayed for granting bail in connection with **Special Case No. 156/2023 (arising out of Golakganj P.S. Case No. 164/2023)** registered under Section 22(c) of NDPS Act r/ w Section 3 of Prevention of Damage of Public Property Act pending in the court of learned Special Judge (Addl.) Dhubri.

The matter relates to recovery of 114 nos. of bottles of 'XCOF' cough syrup from the possession of the accused petitioners.

It is submitted by the learned counsel for the petitioners that the petitioners have been detained in judicial custody for more than one and half year since their arrest on 19.03.2023. Considering the length of detention, the petitioners may be enlarged on bail.

On the other hand, learned Additional Public Prosecutor submits that out of ten witnesses, five witnesses have already been examined. The FSL report gave positive tests for Codeine. The seized items is of commercial quantity and as such, Section 37 is attracted herein this case. Considering the gravity of the offence, bail may not be considered at this stage.

I have considered the submissions made by the learned counsel for the parties. I have also perused the trial court record.

On perusal of the case records, it appears that out of ten witnesses, five witnesses were examined. Apparently, there is no procedural delay on the part

of the trial court. Petitioners have been detained in judicial custody for more than one and half year since their arrest on 19.03.2023. Subsequently, charge under Section 22 (c) of the NDPS Act was framed on 14.07.2023 against the accused petitioners.

The NDPS Act is a special Act with an inbuilt mechanism in the form of Section 37 relating to bail.

The Hon'ble Supreme Court in the case of ***Chandrakeshwar Prasad Vs. State of Bihar***, reported in ***(2016) 9 SCC 443***, has laid down in clear terms that interest of the society is a relevant factor to be taken into account while considering the prayer for bail. For ready reference, the relevant paragraphs of the said case are extracted herein below:

"10. This Court in Rajesh Ranjan Yadav @ Pappu Yadav v. CBI through its Director (2007) 1 SCC 70 balanced the fundamental right to individual liberty with the interest of the society in the following terms in paragraph 16 thereof:

"We are of the opinion that while it is true that Article 21 is of great importance because it enshrines the fundamental right to individual liberty, but at the same time a balance has to be struck between the right to individual liberty and the interest of society. No right can be absolute, and reasonable restrictions can be placed on them. While it is true that one of the considerations in deciding whether to grant bail to an accused or not is whether he has been in jail for a long time, the court has also to take into consideration other facts and circumstances, such as the interest of the society."

On consideration of the matter in its entirety, this Court is not inclined to grant

of bail to the accused/petitioners, at this stage. Therefore, prayer for bail is rejected. However, trial court is directed to expedite the trial.

The bail application stands disposed of.

JUDGE

Comparing Assistant