

GAHC010168242024



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

Case No. : Bail Appln./2516/2024

MD DILWAR KHAN @ MD DILBAR KHAN
S/O LATE AZIZ KHAN, R/O VILL- NO. 2 HARIPUR, BOHORIHAT, P.S.-
TARABARI, DIST- BARPETA, ASSAM

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

Advocate for the Petitioner : MR. N N JHA, N NEOG, MS M SAHOO, MS. S KAUR

Advocate for the Respondent : PP, ASSAM,

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

Date : 18-09-2024

Heard Mr. N.N. Jha, learned counsel for the petitioner. Also heard Mr. B. Sarma, learned Addl. P.P. Assam appearing for the State.

This application under Section 483 of BNSS, 2023 has been filed by the petitioner, viz. Md. Dilwar Khan @ Md. Dilbar Khan, who has been detained behind the bar since 25-

06-2023 (for last more than 01 year 03 months) in connection with NDPS Case No. 201/2023 pending in the court of Addl. Sessions Judge No. 2, Kamrup (M) at Guwahati.

The gist of accusation in this case is that on the basis of an FIR lodged by one Sri Vikram Basumatary, Inspector of Police before the Officer-in-Charge of STF Police Station regarding seizure of 765 grms. of suspected heroin from the rented accommodation of the accused persons named in the FIR including the present petitioner. An investigation was initiated and on completion of the investigation, charge-sheet was laid against the present petitioner and other co-accused persons under Section 21(c)/29(1)/25 of the NDPS Act, 1985.

The learned counsel for the petitioner has submitted that the petitioner is an innocent person and the contraband was not recovered from his possession. He also submits that the petitioner has been detained behind the bar for last more than 01 year 03 months and though the charges were framed on 03-06-2024 and more than 50 witnesses are listed in the charge-sheet, not even a single prosecution witness has been examined till date. Therefore, he prays for allowing the petitioner to go on bail.

On the other hand, Mr. B. Sarma, learned Addl. P.P. Assam has vehemently opposed the grant of bail to the petitioner on the ground that the contraband involved in this case is of commercial quantity and therefore, the embargo of Section 37 of the NDPS Act, 1985 comes into play. He also submits that the seizure list fairly shows that the recovery of contraband was made not only from the vehicle but also from the rented house where the petitioner was residing.

I have considered the submissions made by the learned counsel for both the sides and have also perused the scanned copy of the trial court's records, which are requisitioned in connection with this case. On perusal of the seizure list, prepared on 02-07-2023 in this case, it appears that the recovery of the seized contraband was made from the possession also of the present petitioner. It also appears that charges were also framed against the present petitioner on 03-06-2024 and therefore, *prima facie* there appears to be materials against the petitioner in this case and hence, the embargo of Section 37 of the NDPS Act, 1985 appears to be applicable against the petitioner in this case. As regards the submission made by the learned counsel for the petitioner regarding prolong incarceration is concerned, though there are 50 (fifty) witnesses listed in the charge-sheet by the prosecution side and though the examination of witnesses is yet to be commenced, however, this Court is of the considered opinion that considering the nature of offence involved in this case, incarceration of 01 year 03 months may not be considered as long enough to override the embargo of Section 37 of the NDPS Act, 1985.

This bail application is, therefore, rejected at this stage.

JUDGE

GS

Comparing Assistant