

GAHC010180662023



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

Case No. : Bail Appln./2917/2023

KAPIL DEU RAY AND ANR
S/O LATE JINTU RAI
R/O VILL- WARD NO. 03 BHADWAS
POST GASANPUR
P.S. MAHUA
DIST. BAISHALI, STATE BIHAR.

2: SRI RAMESH KUMAR
S/O SRI RAM PADARATH RAY
R/O VILL- WARD NO. 12
MIRJA NAGAR
P.S. MAHUA
DIST. BAISHALI
STATE- BIHAR

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR U S BORGOHAIN

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

ORDER

Date : 19-01-2024

1. Heard Mr. U.S. Borgohain, learned counsel for the petitioners *Kapil Deu*

Ray and Ramesh Kumar.

2. The petitioners have filed this application under Section 439 of the Code of Criminal Procedure (CrPC for short) with prayer for bail as they are behind bars since 31.12.2022 in connection with *NDPS Case No. 33/2023 arising out of Basistha Police Station Case No. 1089/2022 under Sections 20(c)/29 of the Narcotic Drugs and Psychotropic Substances Act, 1985* (NDPS Act for short).
3. It is submitted on behalf of the petitioners that the petitioners have been languishing in the jail for 384 (Three Hundred Eighty Four) days, but not a single witness has been examined. Due to the procrastination of this case by the Court as well as by the prosecution, the personal liberty of the petitioners as guaranteed by article 21 of the Constitution of India have has been curtailed. The petitioners were arrested on the same day when they were apprehended and since then they have been behind bars. It is not because of the conduct of the petitioners that trial has been procrastinated. The ganja weighing 235.49 KGs was found in a secret cabin in the hood of the driver's cabin. It is not possible for the labours like driver and handyman to construct a secret cabin inside the vehicle without the knowledge of the owner. The owner was not arrested in connection with this case. The vehicle bearing registration number *UP 51 AT 4852* was already given in zimma to the owner of the vehicle.
4. Heard Mr. M.P. Goswami, learned Additional Public Prosecutor for the respondent State of Assam.
5. The learned Additional Public Prosecutor has raised serious objection stating that the ganja was recovered from the conscious possession of the

driver and the handyman. The petitioners are the driver and the handyman of the vehicle. It is not possible for the owner to load ganja weighing 235.49 KGs without the help of the driver and the handyman. Charge was framed on 13.12.2023 and the next date fixed for evidence is 09.01.2024.

6. I have considered the submissions at the bar with circumspection.
7. The LCR reveals that the petitioners were forwarded on 31.12.2022 to custody. Since then the charge was not framed for over a year. Charge was framed on 13.12.2023. The trial has not yet commenced. Witnesses have not been examined.
8. The petitioners have relied on the decision of a Coordinate Bench of this Court dated 21.04.2023 in Bail Application No. 1411/2023 wherein it has been observed:

For the reasons, set forth above, this Court is of the opinion that without passing any comment on the evidence already recorded in the case, only on consideration of the length of detention (547 days) and applying the ratio of the judgment rendered in Mohd Muslim (supra), it is provided that the accused

petitioner, named above, shall be released on bail of Rs. 1,00,000/- (Rupees one lakh) only with 2 (two) sureties of like amount to the satisfaction of the learned Special Judge (NDPS Act), Dibrugarh subject to the following conditions.....”

9. It is submitted that this case of Junush Khan (supra) is similar to this case and the petitioners are similarly circumstanced petitioners. The petitioners have also prayed for bail on the ground of parity. It is

submitted that as trial has not commenced the embargo under Section 37 does not fetter the bail application. I have considered the foregoing discussions.

10. I have also considered the submission that the petitioners have been behind bars since 31.12.2022 and not a single witness has been examined. Considering the peculiar and unique circumstances of this case, petition is allowed and this order may not be taken as a precedent.
11. The petitioners are enlarged on bail on furnishing a bail bond of *Rs.1,00,000/- (Rupees One Lac)* each with two local sureties of like amount to the satisfaction of the trial Court under the conditions that:
 - (1) The petitioners shall appear before the trial Court regularly and cooperate with the trial.
 - (2) The petitioners shall not jump the bail.
 - (3) The petitioners shall refrain from such activities with which they are alleged.
12. On breach of any of the bail conditions, bail order shall stand cancelled.
13. In the above terms and conditions bail Application stands disposed.

JUDGE

Comparing Assistant