

GAHC010186532023



THE GAUHATI HIGH COURT AT GUWAHATI
(The High Court of Assam, Nagaland, Mizoram and Arunachal Pradesh)

PRINCIPAL SEAT AT GUWAHATI

Bail Application No. 2960/2023

Rosidul Hoque @ Roshidul Hoque,
Aged about 27 years, son of Late
Mofiz Uddin, resident of Vill. Juria Gaon,
Kadamoni Town, Ward No. 4, P.S.-Juria,
In the district of Hojai, (Assam)

.....Accused/Petitioner

-Versus-

The State of Assam,
Represented by the Public Prosecutor of Assam

.....Respondent.

Advocate for the Petitioner : Mr S Nawaz

Advocate for the respondent : Mr B B Gogoi, APP, Assam.

BEFORE
HON'BLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

Date of Order : 02.02.2024

ORDER

Heard Mr S Nawaz, learned counsel for the petitioner, Rosidul Hoque @ Roshidul Hoque.

2. The petitioner has filed this application under Section 439 CrPC, with prayer for bail, as he is behind bars since 29.09.2022, in connection with Special NDPS Case No. 12(H)/2023, registered under Sections 21(c) of the Narcotic Drugs And Psychotropic Substances Act, 1985 (NDPS, for short).

3. Heard Mr B B Gogoi, learned Additional Public Prosecutor for the State of Assam.

4. It is submitted on behalf of the petitioner that although this is a case pertaining to commercial quantity of contraband, which attracts the rigours of Section 37 of the NDPS Act, the materials on record clearly disclose that the petitioner is not involved with the offence. He is not connected with the drug trade though charges have been framed against him. The charges were

superficially framed without delving deep into the facts of the case. Investigation was conducted in a perfunctory manner and there is every possibility that the petitioner would be acquitted.

5. It is submitted that when the petitioner deboarded the train at Lumding, the investigating team confronted him about a packet, which was on the train, near his seat. The petitioner denied that the packet belonged to him. However, the investigating team did not accept his version and forwarded him to custody. As the petitioner has been languishing in jail since 29.09.2022, his right to personal liberty has been infringed. The petitioner has a *prima facie* case to be granted bail. Trial has already commenced and further custodial detention will be nothing but a punitive detention as the petitioner is willing to cooperate with the trial.

6. The learned Additional Public Prosecutor has raised objection stating that the petitioner was apprehended by the investigating team and he was found in possession of commercial quantity of brown sugar, weighing 1258.95 grams with the container and 421.86 grams without the container. 31 plastic containers containing brown sugar were recovered from a bag which was in his possession. Charge sheet was laid against the petitioner on 28.02.2023.

Charges were framed on 16.03.2023.

7. Scanned copies of the LCR reveals that not a single witness has been examined so far

8. It is true that the petitioner is behind bars for 1 year 4 months and not a single witness has been examined so far. Indeed, the petitioner has been languishing in the jail without trial, but at this juncture, I am hesitant to grant bail to the petitioner as the rigours of Section 37 of the NDPS Act acts as an embargo.

9. Petition with prayer for bail is rejected at this juncture, with a direction to the learned trial Court to expedite the trial for speedy disposal of the case.

10. The petitioner is at liberty to apply for bail if trial will be procrastinated, any further.

11. Bail Application stands disposed of.

JUDGE

Comparing Assistant