

GAHC010195692023



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

Bail Application No. 3136/2023

1. Gulshan Ahmed,
Age 21 years,
S/o Lt. Samsul Alom,
Vill: West Kanishail,
P.S. & Dist.- Karimganj, Assam.
PIN-788710.

2. Abdul Munim,
Age 20 years,
S/o Abdul Jalil,
Vill-Sharifnagar,
P.S. & Dist.-Karimganj, Assam.
PIN-788710.

3. Abdul Mazid,
Age 26 years,
S/o Akram Ali,

Vill: East Kanishail,
P.S. & Dist: Karimganj, Assam.
PIN-788710

.....Petitioners

-Versus-

The State of Assam
(Represented by Public Prosecutor, Assam)

.....Opposite party.

Advocates for the Petitioner : Mr S C Biswas,

Advocate for the respondent: Mr B B Gogoi, APP

BEFORE
HON'BLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

Date of Order : 13.02.2024

ORDER

Heard Mr S C Biswas, learned counsel for the petitioners, 1) Gulshan Ahmed, 2) Abdul Munim and 3) Abdul Mazid.

2. The petitioners have filed this application under Section 439 CrPC, with prayer for bail, as they are behind bars since 26.05.2021, in connection with

Special Case No. 49/2021, arising out of Karimganj PS Case No. 511/2021, under Section 22(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 petitioners that the petitioners were arrested on 26.05.2021 and they are behind bars for 980 days. Only 9 witnesses have been examined and all the PW-s have been declared as hostile witnesses as they did not support the prosecution case.

5. It is submitted that the petitioners are entitled to bail as one of the conditions under Section 37 of the NDPS Act, will not be met in this case. It is submitted that out of the two pronged conditions, the condition that the proceeding may entail in conviction has been refuted by the evidence of witnesses, who have not supported the prosecution case. As all the witnesses have been declared as hostile, the prosecution case has lost its sanctity.

6. It is also submitted that the petitioners are willing to abide by any stringent conditions, if imposed upon them.

7. The learned Additional Public Prosecutor has raised objection against the bail petition, stating that charges have been framed against the petitioners and they are facing the trial. The petitioners were intercepted while they were in possession of 70,000 tablets, weighing 7.339 kgs + 7.02 kgs. The petitioners were apprehended while carrying the tablets in one car bearing Registration No. AS-11-H-2073 of Hyundai make and one Honda Dio Scooty bearing Registration No. AS-11-U-4793.

8. It is submitted that this case is proceeding at a regular pace. This is not a case where trial has been procrastinated by the Court or by the prosecution. 9 witnesses have already been examined in connection with this case. The case is at the fag end of trial. The forensic test also resulted in a positive report of contraband. 11 witnesses are enlisted in the charge sheet and 9 witnesses have been examined. The learned Additional Public Prosecutor has prayed to reject the bail petition.

9. I have considered the submissions at the Bar with circumspection.

10. The learned counsel for the petitioner has relied on the decision of the High Court of Judicature at Delhi, in ***Mohit Agarwal –Vs- Narcotics Control Bureau***, reported in **AIRONLINE 2021 DEL 331**. This case is,

however, not relevant to this case as ***Mohit Agarwal's case (supra)*** has been overruled by Hon'ble the Supreme Court.

11. The learned counsel for the petitioner has also relied on the decision of ***Mohd. Muslim @ Hussain –Vs- State (NCT of Delhi)***; reported in **2023 SCC Online SC 352**. This case is also not similar to this case because in ***Mohd. Muslim's case (supra)***, the appellant Mohd Muslim was languishing in the jail for more than 7 years and 34 witnesses were yet to be examined. However, in the instant case, 9 out of 11 witnesses have been examined and this case is at the fag end of the trial. The learned counsel for the petitioner has also relied on the decision of the coordinate Bench of this Court in BA No. 1995/2023, BA No. 2661/2023, BA No. 1759/2023, BA No. 2475/2023, BA No. 3487/2023, BA No. 2316/2023 and BA No. 2925/2023. The instances referred to by the learned counsel for the petitioners relating to the decision of the Coordinate Bench of this Court, in connection with the aforementioned bail applications, are not similar to this case.

12. It appears that investigation may be adversely affected if the petitioners are enlarged on bail, at this juncture.

13. It is also apparent that the rigour of Section 37 of the NDPS Act, acts

as an embargo in this case.

14. Considering all aspects and in view of my foregoing discussions, this Court is constrained to reject the bail petition.

15. Petition with prayer of bail is rejected at this stage.

16. On further procrastination of trial, the petitioners are at liberty to apply for bail, which may be considered by the Court as per the merits of the case. The learned trial Court is directed to expedite the trial for speedy disposal of the case.

17. Bail Application stands disposed of.

JUDGE

Comparing Assistant