

GAHC010207082023



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

Case No. : Bail Appln./3341/2023

SOLOMON AND ANR
S/O- LATE THSUPENCHU @ THSIIPHENCHU THUER VILL- MOLLEN, P.O.
AND P.S. MELURI, DIST.- PHEK, NAGALAND, PRESENTLY RESIDING AT
VILL- THAHEKHO, NEAR THAHEKHO TINIALI, P.S. WEST DIMAPUR, DIST.-
DIMAPUR, NAGALAND

2: SRI SIMON THUER
S/O- SRI. TESOMU THUER
VILL- MOLLEN
P.O. AND P.S. MELURI
DIST.- PHEK
NAGALAND PRESENTLY RESIDING AT VILL- JIIRIIKIIKHIE COLONY
MELURI TOWN
P.S. MELURI
DIST.- PHEK NAGALAN

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR

Advocate for the Petitioner : MOTIUR RAHMAN

Advocate for the Respondent : PP, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA**

ORDER

Date : 19.04.2024

Heard Mr. A. Ahmed, learned counsel for the petitioners. Also heard Mr. B. Sarma, learned Additional Public Prosecutor.

This application under Section 439 of Code of Criminal Procedure, 1973 has been filed by the petitioners, namely, (1). Sri Solomon and (2). Sri Simon Thuer, who are detained behind the bars since 01.08.2022 (for last 1 year 8 months and 19 days) in connection with Special (NDPS) Case No. 82/2022 pending before the learned Special Judge, NDPS, Karbi Anglong.

The learned counsel for the petitioners submitted that the petitioners are facing trial before the court of learned Special Judge, NDPS, Karbi Anglong, and have been charged under Section 21(c)/29 of the NDPS Act, 1985. It is also submitted by the learned counsel that in spite of prolonged incarceration of 1 year 8 months and 19 days, the recording of evidence of the prosecution witnesses has not been completed. It is submitted that out of total 5 listed prosecution witnesses, 4 witnesses have already been examined but the Investigating Officer of the case could not be examined in spite the case being fixed before the trial court on several occasions. Hence, he has prayed for allowing the petitioners to go on bail.

On the other hand, the learned Additional Public Prosecutor has submitted that the Special (NDPS) Case No. 82/2022 was fixed before the trial court on 18th April, 2024 for examination of the Investigating Officer.

However, the learned counsel for the petitioners submitted that on 18.04.2024 also, the Investigating Officer did not turn up. The learned Additional Public Prosecutor submitted that as only one witness is remaining for examination, the prosecution side may be given a chance to adduce evidence of last remaining witness within a month, to which the learned counsel for the petitioners does not make any objection.

Considering the above facts, this bail application is disposed of with a direction to the learned Special Judge, NDPS, Karbi Anglong to make all endeavours to examine the Investigating Officer, who is the only witness remaining to be examined, within a period of 1 (one) month from the date of this order.

The petitioners above-named shall be at liberty to approach this Court again if the testimony of remaining witness is not recorded within the time allotted to the prosecution side.

JUDGE

Comparing Assistant