

GAHC010209422023



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

Case No. : Bail Appln./3268/2023

ASEMONG THUPITOR
S/O LT. DHALUTA THUPITOR R/O VILL. CHUMUKIDIMA TOWN WARD NO.
5 P.S. SUB URBAN DIMAPUR NAGALAND

VERSUS

THE STATE OF ASSAM
REP BY THE PP, ASSAM

Advocate for the Petitioner : A W AMAN

Advocate for the Respondent : PP, ASSAM

BEFORE
HON'BLE MR. JUSTICE ROBIN PHUKAN

ORDER

05.02.2024

Heard Mr. S. Nawaz, learned counsel for the accused and also heard Mr. R.J. Baruah, learned Additional Public Prosecutor, Assam, appearing for the State respondent.

2. This application, under section 439 Cr.P.C. is preferred by accused, namely, Asemong Thupitor, who has been languishing in jail hazot since 15.10.2022, in connection

with NDPS Case No.07/2023, under Section 21(c) of the NDPS Act, pending before the Court of learned Special Judge, Karbi Anglong, Diphu, arising out of Dillai P.S. Case No.34/2022, under Section 21(c) of the NDPS Act, for grant of bail.

3. It is to be noted here that the above noted case has been registered on the basis of an FIR lodged by SI(UB) Deba Pratim Konwar, I/C Lahorijan P.P., under Dillai P.S., on 15.10.2022. The essence of allegation made in the aforesaid FIR is that acting on a tip off, he along with police staff, intercepted one red coloured Maruti Alto car, bearing Registration No.AS-04A-0781 at about 10:20 a.m., at Naka checking point and during search of the vehicle they recovered 13 nos. of identical soap boxes containing suspected heroin weighing 384.56 gm, with plastic packets without soap box and also apprehended the driver of the vehicle, namely, Asemong Thupitor.

4. Mr. Nawaz, learned counsel for the accused, submits that the accused was arrested on 15.10.2022, and since then he has been languishing in jail hazot for last 479 days. Mr. Nawaz further submits that the investigation of this case had culminated in submission of charge-sheet against the present accused under Section 21(c) of the NDPS Act and thereafter, the learned Court below had taken cognizance of the offence under Section 21(c) of the NDPS Act and framed charge against the accused under the said section and till date examined three witnesses, out of 10 witnesses cited in the charge-sheet. Mr. Nawaz further submits that for last 13 dates no witnesses have turned up though the learned Court below has issued summons to the witnesses and that the trial is protracted and as such, Mr. Nawaz contended to enlarge the accused on bail and in alternate, he prays that the learned Court below may be directed to conduct day to day trial and to complete the same as early as possible.

5. Mr. R.J. Baruah, learned Additional Public Prosecutor, Assam, however, has opposed the petition on the ground that the quantity of contraband substance recovered from the possession of the accused is of commercial quantity and that the accused has failed to satisfy the two requirements of Section 37 of the NDPS Act.

6. Having heard the submission of learned Advocates of both sides, I have carefully gone through the petition and the documents placed on record and also perused the

scanned copy of the record and the case diary received from the learned Court below.

7. It appears that the quantity of contraband substance recovered from the alleged possession of the accused is of commercial quantity weighing 384.56 gm of heroin and as such, the accused has to satisfy the requirement of Section 37 of the NDPS Act. But, having perused the documents placed on record and also having perused the evidence of the three independent witnesses examined by the learned Court below and also from the submission of learned Advocates of both the parties, this Court is unable to derive its satisfaction that the accused is not guilty of the offence and that he will not commit such offence while on bail. Further, it appears that out of 10 cited witnesses, 3 witnesses have already been examined. Though on last 13 dates no witnesses have turned up, yet, it appears from the record that the learned Court below has issued summons to the prosecution witnesses and as such, it cannot be said that the trial is being protracted on account of the fault of the prosecution side or on account of the fault of the Court.

8. Having considered above, and also having considered the submission of learned Advocates of both sides, and also the nature and gravity of the offence, this Court is the view that this is not a fit case where the privilege of bail can be granted to the accused. However, the learned Court below is directed to conduct the day to day trial by taking resort to Section 309(1) Cr.P.C. and to complete the trial at an earliest date, without being influenced by any of the observation made herein above, as the same has been made only for the purpose of disposing of this bail application.

9. In terms of above, this bail application stands disposed of.

Sd/- Robin Phukan
JUDGE

Comparing Assistant