

GAHC010219262023



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

Case No. : Bail Appln./3473/2023

MD. MOHIBUR RAHMAN AND 2 ORS
SON OF MD. BHAITY ALI @ MAFIK ALI, RESIDENT OF JAJORI NEAR SARU
MASJID, P.S. JAJORI, DISTRICT- NAGAON, ASSAM

2: MD. DILDAR HUSSAIN
SON OF MD. TAJAMUL HUSSAIN
RESIDENT OF JAJORI NEAR SARU MASJID
P.S. MIKIRBHETA
DISTRICT- MORIGAON ASSAM

3: MD. BABUL SEIEKH
SON OF LATE ABDUL SALAM
RESIDENT OF JAJORI NEAR SARU MASJID
P.S. MIKIRBHETA
DISTRICT- MORIGAON ASSAM

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

Advocate for the Petitioner : MR D K DAS
Advocate for the Respondent : MR. M P GOSWAMI(ADDL.PP, ASSAM)

BEFORE

HON'BLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

ORDER

20.02.2024

Heard Mr D K Das, learned counsel for the petitioners, 1) Md Mohibur Rahman, 2)

Md Dildar Hussain and 3) Md Babul Seiekh.

2. The petitioners have filed this application under Section 439 CrPC, with prayer for bail, as they behind bars since 29.03.2023, in connection with NDPS Case No. 69/2023, arising out of Khatkhati PS Case No. 29/2023, registered under Sections 20(c)/29 of the NDPS Act, 1985.

3. Heard Mr M P Goswami, learned Additional Public Prosecutor for the State of Assam.

4. It is submitted on behalf of the petitioners that 61.410 kgs of ganja was recovered. Only one out of five witnesses have been examined. The petitioners deserve bail as they are behind bars for 316 days and trial has been procrastinated and their personal liberty has been curtailed.

5. The learned Additional Public Prosecutor has raised objection stating that this not a case where trial has been procrastinated by the Court or the prosecution. Trial is proceeding at a regular pace. The petitioners' bail application has to be rejected as the rigour of Section 37 of the NDPS Act, acts as an embargo.

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

7. It is true that charge sheet has been laid against the petitioners and charges have also been framed against the petitioners. It is true that the petitioners are behind bars for 316 days and only 1 witness has been examined so far, but at the same time, this case cannot be considered to be a case, where trial has been procrastinated by the Court or the

prosecution. The trial is proceeding at a regular pace. It cannot be considered to be a case where personal liberty of the petitioners have been curtailed.

8. Indeed, the rigour of Section 37 of the NDPS Act, acts as an embargo.

9. I am not inclined to grant bail to the petitioners, at this juncture.

10. Petition with prayer for bail is rejected.

11. However, in case, the trial is procrastinated any further, the petitioners are at liberty to subsequently apply for bail, which may be considered by the Court, as per merits of the case.

12. Bail Application stands disposed of.

JUDGE

Comparing Assistant