

GAHC010231132023



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

Case No. : Bail Appln./3736/2023

DEEPAK SHARMA AND ANR
S/O LATE NARAYAN SHARMA
VILL- SINGRIJAN, P.S. DIMAPUR
DIST. KOHIMA, NAGALAND.
PERMANENT ADDRESS- OF VIL- TWISOMJANG, SIMOL, DIST. SENAPOTI,
LITAN, MONIPUR.

2: JAMMINLAL BAITE
S/O SEIKHOMANG BAITE
VILL- MOLVOM
P.S. SANGAIKOT
DIST. CHURACHANDPUR
MONIPUR

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. N N B CHOUDHURY

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI

ORDER

Date : 20.02.2024

Heard Mr. N.N.B. Choudhury, learned counsel for the petitioners.

Also heard Mr. D.P. Goswami, learned Additional Public Prosecutor for the State.

2. This bail application made under **Section 439 Cr.P.C.**, seeking bail by the accused-petitioners, namely, **Deepak Sharma and Jamminlal Baite**, in connection with **NDPS Case No. 182/2021**(arising out of Basistha P.S. Case No. 1637/2021), registered under **Section 21(c)/24/29 of NDPS Act, 1985**.

3. The learned counsel for the petitioner submits that the accused/petitioners have been detained in custody since 02.09.2021. It is also submitted that out of 17 witnesses, 11 witnesses were examined. It is further submitted that none of the witnesses had implicated the present petitioner regarding their involvement in the case. The learned counsel for the petitioners has further submitted that though commercial quantity of heroine was seized from the secret chamber of the truck but the provision of Section 52 and 57 of NDPS Act has not been followed. Under such backdrop, learned counsel for the petitioners has prayed that considering the period of detention, bail may be granted to the petitioners.

4. In support of his submissions, the learned counsel for the petitioners has placed reliance on the following case laws-

(i) Rabi Prakash v. The State of Odisha, reported in 2023 LiveLaw (SC)533.

(ii) Ratna Ram & Anr. v. State of Assam, reported in 2022(4) GLT 424.

(iii) Shariful Islam @ Sarif v. The State of West Bengal, reported in 2022 SCC online SC 2069.

(iv) Mohinder Kumar v. The State, Panaji, Goa, reported in AIR 1995 SC 1157.

5. The learned counsel for the petitioner has pointed out that in the case of Rabi Prakash(supra), the Hon'ble Supreme Court held that "as regard to the twin conditions contained in Section 37 of the NDPS Act, learned counsel for the respondent- State has been duly heard. Thus, the 1st condition stands complied with. So far as the 2nd condition i.e. formation of opinion as to whether there are reasonable grounds to believe that the petitioner is not guilty, the same may not be formed at this stage when he has already spent more than three and a half years in custody. The prolonged incarceration, generally militates against the most precious fundamental right guaranteed under Article 21 of the Constitution and in such a situation, the conditional liberty must override the statutory embargo created under Section 37(1)(b)(ii) of the NDPS Act." According to the learned counsel for the petitioners, the law laid down as aforesaid, considering the fact that the petitioners have been detained in custody for more than two and half years, they may be enlarged on bail.

6. On the other hand, Mr. Goswami, learned Additional Public Prosecutor submits that as per LCR, only 7(seven) witnesses were examined. He further submits that up-to-date LCR is required to consider the bail prayer of the petitioner.

7. I have considered the submissions made by the learned counsel for the parties and also perused the scanned copy of the LCR including the statement of the witnesses recorded so far.

8. It reveals from the record that the petitioners are the driver and

handyman of the truck bearing Regd. No. AS-01-DD-9192. Except P.W.7, none of the witnesses had identified the petitioners who were present in the trial court. It also appears that the charge was framed on 11.01.2022 and after 2(two) years, 11 witnesses were examined out of 17 witnesses. Under such backdrop, this Court is of the view that the accused/petitioners may be enlarged on bail.

9. Accordingly, the accused-petitioners, named above, shall be released on bail in connection with **NDPS Case No. 182/2021(arising out of Basistha P.S. Case No. 1637/2021)**, registered under **Section 21(c)/24/29 of NDPS Act, 1985**, on furnishing bail bond of **Rs.1,00,000/- each** with **two suitable sureties** each of the like amount out of which one of the sureties should be a Government employee, to the satisfaction of the learned Additional District and Sessions Judge No. 2, Kamrup(M) cum Special Judge, Kamrup(M), Guwahati.

10. The direction for bail is further subject to the following condition that the accused-petitioners:

(a) shall not leave the territorial jurisdiction of the learned trial court without prior written permission from him/her till disposal of the case.

11. The learned Additional District and Sessions Judge No. 2, Kamrup(M) cum Special Judge, Kamrup(M), Guwahati, is at liberty to impose any other condition(s) as it deems fit and proper at the time of releasing the accused/petitioners on bail to procure their attendance during trial.

12. The observation made above, shall confine for the purpose of disposal of this bail application only and shall not in any way affect the

proceeding of the trial.

13. In terms of the above, this bail application stands disposed of.

JUDGE

Comparing Assistant