

GAHC010236272023



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

Case No. : Bail Appln./3789/2023

GOLAP KHONDAKAR AND ANR
S/O SHAJAHAN KHONDAKAR
R/O VILL- FULBARI
P.O. GOMA FULBARI
P.S. TARABARI DIST. BARPETA, ASSAM
PIN-781302

2: SHAHANUR MIR
S/O SHAJAHAN MIR
R/O VILL- FULBARI
P.O. GOMA FULBARI
P.S. TARABARI
DIST. BARPETA ASSAM
PIN-78130

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. M U MONDAL

Advocate for the Respondent : PP, ASSAM

B E F O R E
HON'BLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

27.02.2024

1. Heard Mr. M.U. Mondal, learned counsel for the petitioners and Mr. B.B. Gogoi,

learned Addl. PP for the respondent State.

2. The petitioners namely, [1] Golap Khondakar and [2] Shahanur Mir have filed this application under Section 439 Cr.PC with prayer for bail as they are behind bars since 08.01.2023 in connection with NDPS Case No. 30/2023 arising out of Dillai P.S. Case No. 2/2023 registered u/s 21(c)/29 of the NDPS Act, 1985.

3. It is submitted that the petitioner No. 1's grandmother is 95 years old and he wishes to see his grandmother who is old and ailing. The petitioners were the driver and handyman of the vehicle which was seized in connection with this case. The prime accused is the employer Rofik Hussain who is at present absconding. Charge-sheet was filed in part. As the petitioners are behind bars since 08.01.2023 their right to personal liberty has curtailed as trial has not concluded for a prolonged period.

4. On the contrary the learned Addl. PP has raised serious objection against the bail petition stating that 3 out of 8 witnesses have already been examined in this case. The petitioners cannot be exonerated at this juncture by holding that the owner is responsible for keeping the heroin in the vehicle. The offence alleged is of serious nature as heroin was seized in connection with this case.

5. I have considered the submissions at the Bar with circumspection. I have also scrutinised the LCR. It is true that the petitioners are behind bars for more than 1 year since 08.01.2023.

6. The FIR unfolds that on 08.01.2023, on a secret information from a reliable source that a large quantity of suspected drug was being transported from Manipur in a Bolero Pick vehicle bearing Registration No. AS 01 MC 4996, the vehicle was intercepted while it was approaching from Dimapur and was stopped at the naka checking point on NH-36 near Dillai Gate. Search and seizure was conducted as per proper procedure and during search of the afore-mentioned vehicle 286 identical shaped boxes containing suspected heroin was recovered from a concealed self made secret chamber on the backside of the vehicle and the driver and one occupant were

apprehended. The driver is the petitioner No. 1 Golap Khondakar and the occupant is petitioner No. 2 Shahanur Mir. When the suspected heroin was weighed 3358.11 gms heroin was found to be the weight. It is clear that 3358.11 gms of heroin is not a small quantity. It is a humongous quantity of heroin almost 3½ kgs. The petitioners have been charged and trial is under progress. Within a year 3 witnesses have already been examined.

7. This case cannot be considered to be a case where the personal liberty of the petitioners have been curtailed. It has to be borne in mind that the rigour of Section 37 of the NDPS comes into play at this juncture. In this bail application it cannot be held like a mini trial that this trial will entail acquittal. The other condition u/s 37 of the NDPS Act is that the prosecution has raised serious objection.

8. At this stage petition with prayer for bail is rejected, as there appears to be no justified ground to grant bail to the petitioners.

9. However, the petitioners are at liberty to apply for bail subsequently if trial is procrastinated any further by the Court or by the prosecution and the Court may consider the bail petition as per merits of the case. The learned trial Court is to make every endeavour to expedite the disposal of the case.

JUDGE

Comparing Assistant