

GAHC010239752023



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

Case No. : Bail Appln./3939/2023

KAMAL MALAKAR AND ANR
S/O LATE PARESH MALAKAR
R/O VILL- EAST KANISHAIL,
P.O. KANISHAIL, P.S. AND DIST. KARIMGANJ, ASSAM PIN-788711

2: SRI SURAJ DAS
S/O LATE ANIL DAS
R/O VILL- SARISA
SILCHAR ROAD, P.O. SARISHA
P.S. AND DIST. KARIMGANJ
ASSAM, PIN-78871

VERSUS

N C B
REPRESENTED BY SC, NCB

Advocate for the Petitioner : MR H R CHOUDHURY

Advocate for the Respondent : SC, NCB

BEFORE
HON'BLE MR. JUSTICE ROBIN PHUKAN

ORDER

28.06.2024

Heard Mr. H.R. Choudhury, learned counsel for the accused and also heard Mr. S.C. Keyal, learned standing counsel, appearing for the respondent NCB.

2. This application, under section 439 Cr.P.C. is preferred by two accused, namely, Kamal Malakar and Suraj Das, who have been languishing in jail hazot since 10.05.2022, in connection with NDPS Case No.229/2022, pending in the Court of learned Special Judge, Kamrup(M), arising out of NCB Crime No.11/2022, under Section 8(c), read with Section 21(c)/29 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 one complaint to the effect that on 09.05.2022, 303 nos. of cartoons containing 30,279 bottles of phensedyl, codeine based cough syrup were recovered from one TATA Truck, bearing Registration No.AS-01CC-8187 and two persons, namely, Kamal Malakar and Suraj Das have been arrested in connection with the same, from the said vehicle.

4. Mr. Choudhury, learned counsel for the accused submits that the accused were arrested on 10.05.2022, and since then they are languishing in jail hazot. Further, Mr. Choudhury submits that investigation of the case has already been completed and final complaint has been lodged before the learned Trial Court and the learned Trial Court had framed charge against them and examined some of the witnesses and that the accused will appear before the learned Trial Court on each and every date and therefore, Mr. Choudhury contended to allow the petition.

5. On the other hand, Mr. S.C. Keyal, learned standing counsel for the respondent NCB submits that the trial is at the fag end and the learned Trial Court had already completed examination of the witnesses and also examined the accused persons under Section 313 Cr.P.C. and next date is fixed on 11.07.2024 for argument of the case and referring to a decision of Hon'ble Supreme Court in **Miscellaneous Application No.95/2024 in Criminal Appeal Nos.1841-1842/2022 (Md. Abdul Hai @ Abdul Hai Talukdar v. Narcotic Control Bureau)**, Mr. Keyal submits that in similar situation Hon'ble Supreme Court has dismissed the petition and therefore, Mr. Keyal contended to dismiss the present petition.

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

record received from the learned Trial Court.

7. It is not in dispute that examination of the witnesses has already been completed and the accused are also examined under Section 313 Cr.P.C. and the next date is fixed on 11.07.2024 for hearing argument. And as such, the trial is at the last stage and enlarging the accused persons on bail at this stage will hamper disposal of the case. Besides, the offences are serious in nature. The quantity of contraband substances, allegedly recovered from the possession of the accused persons are of commercial quantity and as such, there is a necessity of satisfying the twin requirement of Section 37 of the NDPS Act. But, from the materials placed on record and also from the submission of learned Advocates of both the parties, this Court is unable to derive satisfaction that the accused are not guilty of the offence and that they will not commit any offence while on bail.

8. Hon'ble Supreme Court, in the case of in the case of **Union of India vs. Ajay Kumar Singh @ Pappu**, Criminal Appeal No.952 of 2023 [Arising out of SLP (CRL.) No.2351 OF 2023], decided on 28 March, 2023, where it has been held as under:-

"In view of the above provisions, it is implicit that no person accused of an offence involving trade in commercial quantity of narcotics is liable to be released on bail unless the court is satisfied that there are reasonable grounds for believing that he is not guilty of such an offence and that he is not likely to commit any offence while on bail."

9. Under the aforementioned facts and circumstances, this Court find no merit in this petition and accordingly, the same stands dismissed.

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

Sd/- Robin Phukan
JUDGE

Comparing Assistant