

GAHC010270412023



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

Case No. : Bail Appln./4414/2023

PAOKHANLAL MANLUN
S/O ZILTON MANLUN, R/O SONJANG VILLAGE, P.S.-SAGOLMANG, DIST-
KANGPOKPI, MANIPUR

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

Advocate for the Petitioner : MR P C DEY

Advocate for the Respondent : PP, ASSAM

BEFORE
HON'BLE MRS. JUSTICE SUSMITA PHUKAN KHAUND
ORDER

11.01.2024

Heard Mr P P Baruah, learned counsel for the petitioner, Paokhanlal Manlun.

2. The petitioner has filed this application under Section 439 CrPC, with prayer for bail, as he is behind bars since 28.03.2023, in connection with NDPS Case No. 44/2023, arising out of Dillai PS Case No. 27/2023, corresponding to GR Case No. 133/2023.

3. Heard Mr B B Gogoi, learned Additional Public Prosecutor for the State of Assam.

4. It is submitted on behalf of the petitioner that the petitioner is behind bars for 290 days. Five witnesses have been examined, but the witnesses have not supported the prosecution case. There is every possibility that the petitioner will be acquitted due to the laches. Three witnesses are yet to be examined. The seizure witnesses could not even properly say the actual amount of the contraband seized in connection with this case. PW-1 has categorically stated in his cross-examination that he could not remember the exact weight of the seized heroin. He could not remember the exact weight of the packets of Exhibit-P-2-PW-1 in the seizure list. The seized articles were also not produced to be identified by the PW-1. PW-2 has also stated that his house is about 2 kilometres away from the place of occurrence and the Police could not record his statement. The Police just told him that the contraband weighed near about 500 grams.

5. PW-3 is the driver of the vehicle and he has stated in his cross-examination that the Police did not seize any document from his possession. The Police did not search his body while he entered into the vehicle and so on and so forth.

6. It is submitted that Section 55 of the NDPS Act has also not been complied with. This case will not entail conviction and the embargo under Section 37 of the NDPS Act does not act as a fetter against the bail petition.

7. The learned Additional Public Prosecutor has raised serious objection against the bail petition stating that the seizure list marked as Annexure-B of the petition clearly reveals that 565.28 grams of heroin was seized from the possession of the present

petitioner. Five witnesses have already been examined. The petitioner was arrested on 28.03.2023 and within one year, the case is at the fag end of the trial. The embargo under Section 37 of the NDPS Act comes into play. The technicalities and merits of this case cannot be taken into account at this juncture.

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

9. Within one year, five witnesses have been examined. This case is of a serious nature. The import of the section and the offence under which, the petitioner is facing trial falls under the embargo of Section 37 of the NDPS Act.

10. At this juncture, there appears to be no justified ground to grant bail to the petitioner.

11. Petition with prayer for bail is rejected at this stage.

12. Bail Application stands disposed of.

JUDGE

Comparing Assistant