

GAHC010273302023



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

Case No. : Bail Appln./4409/2023

ANAR ALI
S/O KASIM ALI
VILL- MANAHKUCHI
P.S. HAJO
DIST. KAMRUP (R), ASSAM

VERSUS

THE STATE OF ASSAM
TO BE REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. A AHMED

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY

ORDER

Date : 10-06-2024

Heard Mr. A Ahmed learned counsel for the petitioner. Also heard Mr. M.P. Goswami learned Addl. PP, Assam.

This is an application under section 439 Cr.P.C praying for bail of the accused namely, Anar Ali, who is facing trial in connection with

Special (NDPS) Case No.34/2023, arising out of Hajo PS Case No.239/2023 registered under sections 20(b)(ii)(C)/29 of NDPS Act.

The petitioner was arrested on 03.04.2023 and since then he is in custody. It is alleged in the FIR that the banned contraband (cannabis) of 25 kgs were recovered from the possession of the accused.

Mr. Ahmed referring to the FIR, on the basis of which the petitioner was arrested, argues that the FIR itself disclose that it is not cannabis rather dry leaves material suspected to be ganja and therefore, in terms of section 2(iii)(b), the same cannot be treated as cannabis.

In this regard Mr. Ahmed, learned counsel for the petitioner relies on the decision of the Rajasthan High Court in S.B. Criminal Miscellaneous Bail Application No.2376/2024.

Perused the materials available on record as well as the scanned copies of the record.

The seizure list as well as the statement of the seizure witness discloses that recovered materials were "ganja". In the forwarding report, it is mentioned to be "recovery of suspected ganja".

Therefore, this court cannot make a conclusion, at this stage, that the recovered materials are not cannabis and it is "Bhang" which will come under the provisions of *Assam Ganja and Bhang Prohibition Act, 1959*.

The judgment relied on by Mr. Ahmed was passed in different context inasmuch as the petitioner therein was having a license to sale Bhang and the recovery made was also bhang.

Accordingly this court is of the view that the petitioner has failed to make out a case to satisfy the rigor of Section 37 of the NDPS Act.

Accordingly the present petition stands dismissed.

JUDGE

Comparing Assistant