

GAHC010276012023



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

Case No. : Bail Appln./4463/2023

NITESH KUMAR AND ANR
S/O LATE MAHESH RAY
R/O VILL- WARD NO. 13, TARIYANI, P.O. BISAMBHARPUR
P.S. HEOHAR
DIST. SHEOHAR, BIHAR.

2: SUJEET KUMAR
S/O NABA KUMAR RAY
R/O VILL- SHEOPUR
P.S. MATIHARI
DIST. MATIHARI
BIHAR

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR S RAHMAN
Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI

ORDER

29.02.2024

Heard Mr. S. Rahman, learned counsel appearing for the accused petitioners as well as Mr. D. P. Goswami, learned Addl. P.P., Assam appearing for

the State respondent.

By this petition under Section 439 Cr.P.C., the accused-petitioner, namely **Nitesh Kumar and Sujeet Kumar**, have prayed for grant of bail in connection with **NDPS Case No. 329/2022 pending before the court of Additional District and Sessions Judge No.5, Kamrup(M) corresponding to GRPS Case No. 102/2022 under Section 17(c)/29 of NDPS Act.**

The scanned copy of the case record, as called for, is placed before the Court.

It is noticed that the accused petitioner has been in judicial custody since 22.07.2022, that is, for 587 days.

It is submitted by the learned counsel for the petitioners that though charges have been framed but no witness was examined till now and considering such prolonged delay, bail may be granted to the petitioners. In support of his submission he has placed reliance the following case laws: (i) Mohd Muslim @ Hussain vs State (Nct of Delhi) in Special Leave Petition (Crl) No.(s) 915/2023 (ii) order dated 10.01.2024 in BA No. 4433/2023 and (iii) order dated 01.12.2023 in BA No. 3887/2023.

On the other hand, Mr. D. P. Goswami, learned Additional Public Prosecutor has submitted that commercial quantity of narcotic drugs were recovered from the possession of the accused petitioners. Charges were framed on 23.05.2023. Though summons was issued but the prosecution has failed to examine any witness and he objected the bail prayer of the petitioners.

I have considered the submission of the learned counsel for both the parties.

On perusal of the case record it appears that on 29.10.2022 charge-sheet has been submitted. It also appears from the scanned copy of the record that copy was supplied on 12.04.2023 subsequently, case was fixed for framing of charge on two occasions i.e. on 26.04.2023 and 09.05.2023 but the accused petitioners have filed petition for adjournment which were allowed and as such charge was not framed on the said dates and subsequently the case was fixed on 23.05.2023 and on that date, charge was framed.

The record further reveals that since 04.07.2023, the concerned court was not functioning due to transfer of the Presiding Officer. Hence, summons was not issued to the witnesses. On 04.11.2023, summons were issued to the witnesses. It is true that some delay has occurred in trial but it is not the fault of the trial court.

As commercial quantity of narcotic drugs were recovered from the possession of the accused petitioner prayer for bail stands rejected at this stage.

However, learned trial court is directed to take initiative to dispose of the matter early.

The bail application is disposed of.

JUDGE

Comparing Assistant