

GAHC010284192023



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

Case No. : Bail Appln./4657/2023

JYOTIMOI DAS @ JYOTIRMOI DAS
S/O- SRI DIPAK DAS, R/O- NO. 3 KALIPUR, P.S. TAMULPUR, DIST. BAKSA,
ASSAM

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE P.P., ASSAM

Advocate for the Petitioner : MR S C DAS

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN

ORDER

Date : 19.02.2024

Heard Mr. S.C. Das, learned counsel for the accused. Also heard Mr. R.J. Baruah, learned Addl. Public Prosecutor for the State respondents.

2. This application, under Section 439 Cr.P.C. is preferred by the accused, namely, Jyotimoi Das @ Jyotirmoi Das, who has been languishing in jail hazot in connection with Special NDPS Case No. 3/2022, arising out of Tamulpur P.S.

Case No. 344/2021, under Section 20(C) of the NDPS Act, for grant of bail.

3. It is to be noted here that the aforementioned case has been registered on the basis of an FIR lodged by SI Nipon Gogoi of Tamulpur P.S. on 26.08.2021. The essence of allegation made in the FIR dated 26.08.2021, is that acting on a tip off on 26.08.2021, at about 9:20 a.m., the informant along with police staff, arrived at Kumarikata market and detained one Jyotimoi Das, who was travelling in a red colour Chevrolet Spark car, bearing Registration No. AS-01-AL-1181, and after conducting search in his house, they have recovered 31.46 kg of suspected ganja and seized the same in presence of witnesses.

4. Mr. Das, learned counsel for the accused submits that the accused has been languishing in jail hazot for last 2 years, 5 months and 23 days, and out of 7 witnesses cited in the charge-sheet, the learned Court below has already examined all the witnesses except the informant, and that the case is pending for examination of the informant since 30.08.2023.

5. On a pointed query of this Court as to how the accused will satisfy the requirement of Section 37 of the NDPS Act, Mr. Das submits that since the accused has been languishing in jail hazot for more than 2 years, Section 37 of the NDPS Act cannot stand in the way of granting bail to the accused, and the same cannot also override the provision of Article 21 of the Constitution of India.

6. In support of his submission, Mr. Das has referred to a decision of the Hon'ble Supreme Court in the case of *Mohd Muslim @ Hussain Vs. State (NCT of Delhi)*, reported in *2023 SCC OnLine SC 352*, and considering the length of detention and also considering the fact that the prosecution side has failed to produce the informant before the learned Court below, it is contended that the accused may be enlarged on bail.

7. On the other hand, Mr. R.J. Baruah, learned Addl. Public Prosecutor submits that the case is at the last stage of trial and there remains to be examined only the informant of this case, who is presently posted at Panigaon P.S. in the North Lakhimpur district.

8. It is not in dispute that the accused has been languishing in jail since 27.08.2021, but, it appears that the quantity of the contraband substance allegedly recovered from his possession is commercial quantity and as such, the accused has to satisfy the requirement of Section 37 of the NDPS Act.

9. But, from the materials placed on record and from the scanned copy of the records and also from the submission of learned counsel for the accused, this Court is unable to derive a satisfaction that the accused is not guilty of the offence and he will not commit any offence while on bail. Though, the learned counsel for the accused has referred to the decision in *Mohd Muslim @ Hussain (supra)*, this Court is of the view that the ratio laid down in the aforementioned case would not advance his argument inasmuch as, there the Hon'ble Supreme Court has granted bail to the accused considering Section 436A of the Cr.P.C. and the accused of that case was behind the bar for 7 and 1/2 years.

10. Having regards to above and having regards to the nature and gravity of the offence, this Court is of the view that this is not a fit case where the privilege of bail can be granted to the accused and accordingly, the application stands dismissed.

11. However, the learned Court below is directed to procure the attendance of the informant, namely, Nipon Gogoi, SI, who is presently posted at Panigaon P.S. of North Lakhimpur district and if necessary, by adopting coercive measures, and to complete the trial at an early date, without being influenced by any of the observations made herein above, as the same were made only for

the purpose of disposal of this bail application.

12. In terms of above, this application stands disposed of.

JUDGE

Comparing Assistant