

GAHC010291432023



THE GAUHATI HIGH COURT AT GUWAHATI
(The High Court of Assam, Nagaland, Mizoram and Arunachal Pradesh)

PRINCIPAL SEAT AT GUWAHATI

Bail Application No. 4674/2023

1. Shri Benjamin Basumatory,
Aged about 38 years,
Son of Sri Francis Basumotary,
Resident of Village: No. 2 Dhansiri,
P.S.-Mazbat,
District- Udalguri BTR, Assam.

2. Jiskel Daimary,
Aged about 40 years,
Son of Late Dhanti Ram Daimary,
Resident of Village: Kapurpara,
P.O.- Udalguri, P.S.-Udalguri,
District- Udalguri BTR, Assam.

3. Narayan Basumatory,
Aged about-25 years,
Son of Late Binod Basumotary,
Resident of Village: No. 2 Dhansiri,

P.O.-Rowta, P.S.-Mazbat,
District- Udalguri BTR, Assam.

.....Accused/Petitioners

-Versus-

The State of Assam,
Represented by the Public Prosecutor of Assam

.....Respondent.

Advocate for the Petitioner : Mr Z Kamar, Sr. Adv.

Advocate for the respondent : Mr B B Gogoi, APP, Assam.

BEFORE

HON'BLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

Date of Order : 02.02.2024

ORDER

Heard Mr Z Kamar, learned Senior Counsel for the petitioners, 1) Shri Benjamin Basumatory, 2) Jiskel Daimary and 3) Narayan Basumatary.

2. The petitioners have filed this application under Section 439 CrPC, with prayer for bail, as they are behind bars since 18.05.2023, in connection with Special NDPS Case No. 08/2023, arising out of Mazbat PS Case No. 49/2023,

registered under Sections 20(b)(ii)(C)/29 of the Narcotic Drugs And Psychotropic Substances Act, 1985 (NDPS, for short).

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

4. It is submitted on behalf of the petitioners that they were arrested on 18.05.2023 and since then, they have been languishing in jail. Only 5 (five) witnesses have been examined so far.

5. It is submitted on behalf of the petitioners that the petitioners were travelling in the vehicle and the contraband was not seized from their possession, but they were unnecessarily roped in connection with this case. The last witness PW-5 was examined on 22.11.2023 and till date, not a single witness has not been examined so far.

6. The petitioners are not required to be detained in a manner of punitive detention as five out of six witnesses have already been examined. Evidence has already been recorded. The petitioners have pledged to cooperate with the trial. They have pledged to appear on each and every date. Thus, the petitioners' custody is not required.

7. The learned Additional Public Prosecutor has submitted that this case is at the fag end of trial. The embargo under Section 37 of the NDPS acts as a fetter to this bail application. Charge sheet has been laid against the petitioners and, thus, they were charged with offence of transportation of commercial quantity of contraband.

8. Learned Additional Public Prosecutor has submitted to reject the petition.

9. In reply to the submission of the learned Additional Public Prosecutor, the learned counsel for the petitioners has submitted that there is no incriminating evidence that the contraband was recovered from the possession of the petitioners. This is a case where bail can be granted. The rigours of Section 37 of the NDPS Act is not applicable to this case. The petitioners were behind bars for 8 months 16 days. Their right to personal liberty has been curtailed.

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

11. I have perused the scanned copies of the LCR.

12. The petitioners were charged under Sections 20(b)(ii)(C)/29 of the

NDPS act. This is not a case where trial has been procrastinated by the learned trial Court or by the prosecution militating against the embargo under Section 37 of the NDPS Act. This is not a case where personal liberty guaranteed by Article 21 of the Constitution of India, has been infringed, due to the procrastination of the trial. The petitioners were forwarded to custody on 18.05.2023. Charge sheet was laid on 23.08.2023 and charges were framed on 22.09.2023. Five out of six witnesses have been examined.

13. Merits of this case is not brought to the fore.

14. Within one year, trial is almost complete.

15. The petitioners are charged with the offence of carrying 796 kgs of ganja. Trial is at its fag end.

16. Considering the foregoing discussions, the petition with prayer for bail is rejected, at this juncture.

17. Bail Application stands disposed of.

JUDGE

Comparing Assistant