

GAHC010294132023



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

Case No. : Bail Appln./4705/2023

ZAKIR HUSSAIN
S/O LATE JAHID ALI
R/O SATGAON, AMBARI
OPPOSITE SCHOLAR SHOOL,
P.S. SATGAON
DIST. KAMRUP (M), ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. T DEURI

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

ORDER

Date : 22-01-2024

- 1.** Heard Mr. T. Deuri, learned counsel for the petitioner.
- 2.** The petitioner, namely, Zakir Hussain has filed this application under Section 439

Cr.PC with prayer for bail as he is behind bars since 17.01.2023 i.e. 370 days in connection with NDPS Case No. 73/2023 arising out of Satgaon P.S. Case No. 13/2023 registered u/s 22(c)/20(b)(ii)(B)/8(c) of NDPS Act.

3. Heard Mr. M.P. Goswami, learned Addl. PP, Assam.

4. It is submitted by the learned counsel on behalf of the petitioner that the petitioner has been languishing in the jail for more than 1 year but not a single witness has been examined at this juncture. Moreover, there is no probability that this case will end in conviction to attract the embargo u/s 37 of the NDPS Act, as the seizure witnesses are the petitioner's wife and brother-in-law. On the basis of the official witnesses this case will not entail conviction. The petitioner's liberty guaranteed by Article 21 of the Constitution of India has been curtailed as trial has not commenced despite the fact that the petitioner has been languishing in jail for more than 1 year.

5. The learned Addl. PP has raised objections stating that the petitioner tried to evade his arrest but *ganja* as well as 'Yaba' tablets were found in his house and charge-sheet has been laid against him under grave offence. The rigour of Section 37 of the NDPS Act acts as an embargo. The LCR also reveals that summonses were issued to the witnesses who are related to the petitioner and they have not appeared before the Court to depose as witnesses.

6. I have considered the submissions at the Bar with circumspection. Charge-sheet has been laid against the petitioner u/s 22(c)/20(b)(ii)(B)/8(c). The embargo u/s 37 of the Act acts as a fetter against the bail petition. I have also considered the submission that the petitioner was forwarded to custody on 17.01.2023 and charge-sheet was laid on 17.05.2023 and charges were framed on 06.10.2023. I have also considered the submission of the prosecution that this case cannot be considered to be a case of inordinate delay militating against the embargo u/s 37 of the NDPS Act.

7. Considering all aspects, the petition with prayer for bail is rejected at this stage.

8. The learned trial Court is directed to expedite the trial for speedy disposal of the case.

JUDGE

Comparing Assistant