

GAHC010004902024



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

Case No. : Bail Apnl./111/2024

MIRAJUL ALI @ MIRAJUL HAQUE AND ANR
S/O NASIR ALI
R/O VILL- GOREMARI
MAZDIA,
P.O. PACHIM MAZDIA
P.S. SARTHEBARI
DIST. BARPETA, ASSAM
PIN-781305

2: RAJKUMAR ALI
S/O MUJAFAR ALI
R/O VILL- GOREMARI
MAZDIA

P.O. PACHIM MAZDIA
P.S. SARTHEBARI
DIST. BARPETA
ASSAM
PIN-78130

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. M HUSSAIN

Advocate for the Respondent : PP, ASSAM

BEFORE
HON'BLE MR. JUSTICE ROBIN PHUKAN

ORDER

01.02.2024

Heard Mr. M. Hussain, learned counsel for the accused and also heard Mr. R.J. Baruah, learned Additional Public Prosecutor, Assam, appearing for the State respondent.

2. This application, under section 439 Cr.P.C. is preferred by two accused, namely, Mirajul Ali @ Mirajul Haque and Rajkumar Ali, who have been languishing in jail hazot since 22.12.2023, in connection with Geetanagar P.S. Case No.337/2023, under Section 21(b)/22(b) of the NDPS Act, for grant of bail.

3. It is to be noted here that the above noted case has been registered on the basis of an FIR lodged by one Dipjyoti Choudhury, S.I. of Police, Geetanagar P.S. on 22.12.2023. The essence of allegation made in the aforesaid FIR is that acting on a tip off, the informant and other police staff conducted search in the house No.17 belonging to one Ranjit Kalita, situated at Anil Nagar area and found the accused Mirajul Ali, Rajkumar Ali and Sankar Das inside the house and recovered 9 nos. of vials containing suspected heroin, 280 pieces of Nitrazepam tablets IP 10 mg, 2 nos. of used syringes, 2 nos. of empty soap case, one small piece of aluminum foil, one sting bottle mixed with nitrazepam tablet, cash amount of Rs.7,000/- and one mobile phone.

4. Mr. Hussain, learned counsel for the accused persons, submits that the accused persons were arrested on 22.12.2023 and since then, they are languishing in jail hazot for last 42 days. Further, Mr. Hussain, learned counsel for the accused persons submits that the quantity of contraband substances allegedly recovered from the possession of the accused persons are intermediate quantity and as such the embargo under Section 37 of the NDPS Act will not come into play and that the accused are ready to face trial and they will appear before the learned Court below regularly and therefore, it is contended to allow the petition.

5. On the other hand, Mr. R.J. Baruah, learned Additional Public Prosecutor, Assam, has opposed the petition on the ground that as per the materials collected in the case diary, they are paddlers of drugs and once they are released from jail, they will again start the same business and therefore, it is contended to dismiss the petition.

6. Having heard the submission of learned Advocates for both sides, I have carefully gone through the petition and the documents placed on record and also perused the case diary with the assistance of Mr. Baruah, learned Additional P.P.

7. The case diary indicates that the total quantity of suspected heroin allegedly recovered from the possession of the accused are of 12.05 gm and 280 pieces of nitrazepam tablets weighing 142.8 gm and indisputably the aforementioned quantity of contraband substances are of intermediate quantity and as such, the embargo under Section 37 of the NDPS Act would not come into play. The accused persons are languishing in jail hazot for last 42 days and the case diary indicates that material part of investigation is over and the case is pending for collection of FSL report only.

8. In that view of the matter, further custodial detention of the accused persons seems to be not warranted here in this case and therefore, it is provided that on furnishing a bond of ₹ 50,000/- each, with one surety of the like amount to the satisfaction of the learned Special Judge (NDPS Act), Kamrup(M), Guwahati, both the accused persons, namely, Mirajul Ali @ Mirajul Haque and Rajkumar Ali, be enlarged on bail. Case diary be returned.

9. In terms of above, this bail application stands disposed of.

Sd/- Robin Phukan
JUDGE

Comparing Assistant