

GAHC010045112025



2026:GAU-AS:2784

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

Case No. : I.A.(Crl.)/204/2024

ROMEN KUMAR AND ANR.
S/O SURESH PRASAD YADAB
VILL.- GAUSHALA CHOWK KATIHAR
P.O. AND P.S.- KATIHAR
DIST.- KATIHAR
BIHAR.

2: AMMA DEVI
W/O SUBHASH SINGH

VILL.- HARIMAR
P.S.- HARIMAR
DIST.- MUNGER
BIHAR.
VERSUS

THE STATE OF ASSAM
TO BE REP. BY THE P.P.
ASSAM.

Advocate for : MR. M A CHOUDHURY
Advocate for : PP
ASSAM appearing for THE STATE OF ASSAM

BEFORE
HONOURABLE MRS. JUSTICE SHAMIMA JAHAN

ORDER

Date : 24.02.2026

Heard Mr. A. Ahmed, learned counsel for the applicants. Also heard Mr. M.P. Goswami, learned Addl. P.P. for the State.

2. By this application the petitioners have prayed for suspension of sentence and grant of bail to the appellant who was convicted vide judgment dated 22.11.2023, passed by the learned Sessions Judge, Karimganj in Special (NDPS) Case No. 125/2022 under Section 22(b) (ii)(C)/29 of the NDPS Act and was sentenced to undergo RI for 10 years with fine default stipulation.

3. This case started with the lodging of the ejaher on 27.08.2022 wherein it was revealed that on receipt of an information that three persons were smuggling suspected ganja from Tripura by train, the police personnel on enquiry and after getting the authorization left for the place of occurrence and on arriving in front of Nillambazar P.S. saw three persons along with their luggage and on asking them to produce their luggage they produced five nos. of bags and after conducting a search 5 nos. of bags were recovered separately from three accused persons. To be more precise two bags from Amma Devi, two bags from Romen Kumar, the applicants and one bag from Bipin Kumar.

4. It was mentioned in the FIR that suspected ganja weighing many kilograms was recovered from the possession of the applicants. Thereafter, the petitioner was arrested and the contraband were seized. The police registered the case and upon completion of the investigation submitted charge-sheet against the petitioner and others. Thereafter the trial started and on completion of the trial which included examination of five prosecution witnesses, the appellant was imposed with the conviction and sentenced as mentioned above.

5. Mr. Ahmed, learned counsel for the applicant submits that from the possession of the applicants suspected ganja was recovered. He further submits

that although all accused persons were found together and the total amount of ganja recovered from all the accused persons were of 33.351 kgs but being together would not result in any conspiracy or abatement amongst the all accused persons which according to the learned counsel is held by the Supreme Court in a number of cases. He further submits that the total incursion period imposed upon applicants was 10 years each with final default stipulation and that the applicants has been inside the jail for three years five months twenty eight days. As such, he submits that during the pendency of the appeal, the sentence may be suspended and the applicant be released on bail. To substantiate his argument he relied on the case of ***Narcotic Control bureau Vs Lakhwinder Singh*** in ***Criminal Appeal No. 475/2025***, wherein the hon'ble Apex Court had held that although there is no dispute about the fact that the Appellate Court is bound by the constraints of Section 37 of NDPS Act while considering the prayer for bail during the pendency of appeal. However it is also held that in the facts of the case when an accused undergoes a substantial part of the substantive sentence and by considering the pendency of the criminal appeal and further considering the same may not be heard in near future. The Appellate Court can exercise the power to release the accused persons on bail.

6. Mr. Goswami, learned Addl. P.P. however objects to the suspension of sentence and grant of bail and further states that all the accused persons including the petitioners were found together carrying suspected ganja in their bags and total quantity comes to around 33.351 kgs which is of commercial quantity and such Section 37 NDPS comes into play.

7. He further submits that after conviction the rigors of Section 37 NDPS are to be taken in a more stringent manner compared to a case before conviction.

He relied on a judgment passed by the Supreme Court in the case of ***Shivani Tyagi Vs. State of U.P. and Anr.*** reported in ***2024 INSC 343***, wherein the Apex Court had held that Court should not release the convict on each and every case and if it does so frequent invocation of the said power would become inevitable.

8. I have heard the counsels and I have gone through the records, it is seen that the applicant is inside the jail for more than three years and that he has been imposed with a sentence of ten years under Section 22(b)(ii)(c) of the NDPS Act and the appeal is of the year 2024 and the judgment was passed on 22.11.2023 and date the instant appeal has not been listed for hearing. As such, this Court deems it fit that seeing the length of detention of the applicant in jail, the sentence imposed upon him vide judgment and order dated 22.11.2023 be suspended during the pendency of the appeal and applicants may be released on bail of Rs.20,000/- each with one suitable surety of like amount to the satisfaction of Sessions Judge, Karimganj with the condition that the applicants show their presence on or before 7th date of every month before the local P.S., namely Katihar (Bihar) & Harimar(Bihar) respectively till disposal of the appeal without fail.

9. The I.A. stands disposed of accordingly.

JUDGE

Comparing Assistant