

GAHC010019262023



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

Case No. : Bail Appln./350/2023

NAVIL KISHOR
S/O- SRI NETRAM RAJPOOT, R/O- VILL- MAGNAPUR, P.S- BITHAARI
CHAINPUR, RAJAUPARASPUR, BAREILLY, UP, PIN- 243123

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. S MITRA

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE AJIT BORTHAKUR

ORDER

22.03.2023

Heard Mr. S. Mitra, learned counsel appearing for the accused petitioner as well as Mr. R. J. Baruah, learned Addl. P.P., Assam appearing for the State respondent.

By this petition under Section 439 Cr.P.C., the accused-petitioner, namely, **Navil Kishor**, has prayed for grant of bail in connection with **N.D.P.S. Case No.**

248/2022 under Sections 21(C) of N.D.P.S. Act.

The scanned copy of case diary along with case record, as called for, is placed before the Court.

Mr. S. Mitra, learned counsel for the accused petitioner, submits that the accused has been in judicial custody for 267 days despite the fact that the charge-sheet was filed on 22.11.2022 and till date no witness is examined by the prosecution. Mr. Mitra further submits that after a trip to Nagaland to visit the places of interest on request of his friend one Bicky, they were returning from Dimapur by train and on their way back, the Railway police approached for frisking but surprisingly, Bicky ran away abruptly. According to Mr. Mitra, learned counsel, the police eventually searched his friend's luggage and allegedly found some contraband. Mr. Mitra submits that no narcotic contraband was recovered and seized from the present accused's possession. Therefore, Mr. Mitra submits that the accused petitioner may be directed to be released on bail subject to any condition(s). In support of his contentions, Mr. Mitra, has drawn attention to various technical procedural lapses committed by the GRP during investigation into the case.

Per contra, Mr. R. J. Baruah, learned Additional Public Prosecutor, submits that the case diary reveals that 320 grams of Morphine, which amounted to commercial quantity under the N.D.P.S. Act was recovered and seized from the exclusive possession of the accused petitioner while travelling in 2nd class General coach at the platform No.3 of Guwahati Railway Station where Chandigarh Express arrived from Dimapur side. After completion of the investigation, the charge-sheet was submitted and on scrutiny of the materials on record, the learned trial court framed a charge under Section 21(C) of the N.D.P.S. Act against the accused petitioner. Therefore, Mr. Baruah submits that in view of the bar in Section 37 of the N.D.P.S. Act, the bail application of the accused petitioner may be rejected.

The prosecution case is that on 27.06.2022 at 7.25 P.M. in Train No. 15903,

Chandigarh Express, at 2nd Class General Coach, at Platform No.3, Guwahati Railway Station, the petitioner was found possessing 320 grams of Morphin which falls under commercial quantity without any valid documents.

It is noticed that the accused has been in judicial custody since 28.06.2022 that is, for 267 days.

A perusal of the case record reveals that the charge-sheet in the case was submitted on 18.11.2022 under Section 21(C) of the N.D.P.S. Act against the accused petitioner. After consideration of the materials on the case diary and hearing of both sides, the learned trial court on having found a prima facie case has framed a charge under Section 21(C) of the said Act. 320 grams of contraband Morphine, which amounted to commercial quantity, was prima facie found from the accused while travelling in Train No. 15903 Chandigarh Express at platform No.3, Guwahati Railway Station. He failed to produce any document on demand by police in support of possession of contraband.

There is no indication on record that at the time of recovery, one Bicky was with him and he fled away abruptly witnessing the police approaching them for frisking leaving his contraband containing bag with the present accused.

Therefore, this Court is of the opinion that there appears no reasonable ground for believing that the accused petitioner is not guilty of the offence charged and that he is not likely to commit any such offence while on bail. This court is of the opinion that in view of the bar contained in Section 37 of the N.D.P.S. Act and as the learned trial court has found a prima facie case for framing of charge and further, as the learned trial court is yet to examine any of the listed prosecution witnesses, grant of liberty of bail may likely to hamper a fair and speedy trial of the case.

Accordingly, the bail application of the accused petitioner stands rejected.

The accused petitioner is, however, given liberty to apply for bail, if so advised, at an appropriate stage of trial of the case and if such bail application is filed, the same shall

be considered by the learned trial court in accordance with law.

This disposes of the bail application.

JUDGE

Comparing Assistant