

GAHC010070282023



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

Case No. : Bail Appln./1202/2023

ASHOK KUMAR
S/O RAM NATH
R/O SAKTI COLONY, JANDLI
MODEL TOWN, UMBALA, P.S. UMBALA
DIST. UMBALA, STATE- HARIYANA, PIN-134003

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MS. A. MEDHI

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

ORDER

Date : 04.04.2023

Heard Ms. A. Medhi, learned counsel for the petitioner. Also heard Mr. M.P. Goswami, learned APP appearing for the State.

2. The petitioner, who was arrested on 27.10.2022 in connection

with Basistha P.S. Case No. 941/2022, under sections 20(b)(ii)(C)/25/29 of the NDPS Act, is seeking regular bail under section 439 Cr.P.C.

3. The learned counsel for the petitioner has submitted that the petitioner is a senior citizen, aged about 75 years. It has been submitted that the petitioner is doing business in ginger and is also the owner of the truck and therefore, along with his truck driver, he had gone to Hojai and loaded 100 bags ginger in his truck. While returning to Haryana with ginger, he was not keeping well and was sleeping and during that time, some more goods were loaded in the truck at Byrnihat in Meghalaya. It is submitted that without the knowledge of the petitioner, the driver of the truck had loaded 132 packets of ganja and when the police personnel had intercepted the truck on 27.10.2022, ganja was recovered from the truck. The learned counsel for the petitioner has submitted that the petitioner has a good character and he is not involved in any other crime.

4. The scanned copy of the case records was available in the record of B.A. No. 2934/2022 and therefore, by order dated 31.03.2023, the said record was called for. The learned APP has perused the same and has opposed the prayer for bail.

5. The case diary reveals that the I.O. had recorded the statement of the petitioner, where he had not claimed that he had purchased ginger, but had stated that at Hojai, ginger was loaded in his truck by a businessman, who also loaded some more goods at Byrnihat (Meghalaya). Thus, it cannot be accepted that the petitioner was not well and was sleeping when contraband ganja was loaded in the petitioner's truck bearing registration no. HR-38-T-2913. While 100 bags of ginger was found in the truck, but 132 packets of ganja

weighing about 2104.800 kg was also recovered, which led to registration of Basistha P.S. Case No. 941/2022 against the petitioner and his driver, namely, Jitender Singh. It is unbelievable that someone will be able to load 132 packets in the truck without the knowledge of the petitioner, who was in the truck at that time.

6. The learned counsel for the petitioner had placed reliance on the case of *Md. Bashir Khan v. The State of Assam, Bail Appl. 3297/2022*, to show that the co-ordinate Bench of this Court had granted bail to the petitioner therein on considering that the petitioner- accused therein had suffered custody for 320 days considering the illness of the petitioner- accused therein. Hence, it has been submitted that the petitioner be also enlarged on bail as he is suffering from illness.

7. In respect of the case of *Md. Bashir Khan (supra)*, cited by the learned counsel for the petitioner, it is seen from the order that the petitioner therein was suffering from "*left sided hydro nephrosis along with dilation of proximal part left ureter and kidney stone*", for which the jail doctor had referred him to Morigaon Civil Hospital for better treatment. On a perusal of the medical prescription filed in this case, the prescription at page 34A contains two dates. The registration date is 12.04.21, but below illegible signature, the date appears as 8/5/17. The name of disease from which the petitioner is suffering is not mentioned. The prescription at page 34B is not readable. However, from figures "-0.50/-0.25 x 95° and -0.50/ -0.75 x 76° " it appears that such numbers is most likely to be the power of prescription glasses. Therefore, the petitioner has not been able to show that he is suffering from any disease. Therefore, on distinguishable facts, the said cited decision would not help the petitioner in any

manner.

8. Therefore, merely because the petitioner is a senior citizen, he would not be entitled to bail only because of his age because when the petitioner was intercepted and arrested, he was having conscious possession of commercial quantity of the contraband psychotropic substance.

9. Accordingly, the Court is unable to record its satisfaction that the petitioner is not guilty of the offence under NDPS Act and that if the petitioner is released on bail, he would not repeat the offence, which is the requirement of section 37 of the NDPS Act.

10. It is seen that in this case charge-sheet no. 2/2023 dated 07.01.2023 has been submitted by the I.O., accusing the petitioner of committing offence under sections 20(b)(ii)(C)/25/29 of the NDPS Act, 1985.

11. Hence, in view of the discussions above, the prayer for bail is rejected.

12. The Registry shall not issue certified/un-certified copy of any part of the scanned copy of the case records.

JUDGE

Comparing Assistant