

GAHC010072342023



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

Case No. : Bail Appln./1232/2023

MALAY MUKHARJEE AND ANR
S/O LT. KANAI MUKHERJEE
R/O VILL-FULIYAPARA,P.S. SANTIPUR, DIST. NADIA (WEST BENGAL)

2: HIRONMOY SARKAR
S/O LT. SUBODH SARKAR
R/O VIL- SANTIPUR NEAR BARO BAZAR BUS STAND
P.S. SANTIPUR
DIST. NADIA (WEST BENGAL)

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. A M BORA

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE AJIT BORTHAKUR

ORDER

25.05.2023

Heard Mr. A.M. Bora, learned Sr. Counsel for the accused petitioners as well as Mr. R.J. Baruah, learned Addl. P.P., Assam for the State respondent.

By this petition under Section 439 Cr.P.C., the accused/petitioner, namely **1) Malay Mukharjee and 2) Hironmoy Sarkar** have prayed for grant of bail in connection **Golakganj P.S. Case No. 13/2023** u/s **21(c)** of the NDPS Act, 1985.

The case diary as called for is placed before the Court.

Mr. A.M. Bora, learned Sr. Counsel appearing for the accused petitioners, submits that the accused petitioners have been in judicial custody for 137 days despite being innocent. Mr. Bora submits that the accused petitioner No.1 is the owner and co-driver of the seized truck and the accused petitioner No.2 is the driver employed by the accused petitioner No.1. According to Mr. Bora, the said truck has been engaged in transportation business under Road Kings Pvt. Ltd. for transportation of consignments of medicines with due challan, e-way bills and other requisite documents. Mr. Bora submits that on the alleged date of interception of their truck, the accused petitioners were transporting the consignment of drugs sold by the agency run by Daffodil Drugs Pvt. Ltd. to a wholesale distributor of Cachar District, Assam namely, A.K. Drug Distributors with valid documents such as GST invoice and e-way bill from West Bengal to Cachar. In this regard, Mr. Bora has drawn attention to the consignment notes vide Annexure-VI and VII respectively. Mr. Bora, learned Sr. Counsel, therefore, submits that the accused petitioners were, thus, discharging their obligations and the Court of learned Special Judge (NDPS Act), Dhubri, after examining all the relevant documents such as the invoices, e-payment bills etc., has been satisfied the same to be genuine vide order, dated 15.03.2023. Further, Mr. Bora submits that the Proprietor of A.K. Drug Distributors at Silchar, Cachar has submitted a petition under Section 451 read with Section 457 Cr.P.C. for releasing the seized articles of Codeine based cough syrup bottles packed in 388

cartons claiming to be the absolute owner, which is presently under consideration of the said learned Court. Therefore, Mr. A.M. Bora, learned Senior Counsel, submits that the accused petitioners being absolutely innocent, they may be directed to be released on bail.

Opposing the bail application, Mr. R.J. Baruah, learned Additional Public Prosecutor, submits that the case diary reveals that the case is at investigation stage and the invoices and e-payment bills are genuine.

The case relates to recovery and seizure of 62,080 nos. of Eskuf Cough Syrup bottles (Codeine Phosphate Chloropheniramine Maleate Syrup) of 100 ml. each while being transported in a vehicle bearing registration No. WB 51C 5398.

A perusal of the case record reveals that both the accused petitioners are named in the FIR. The seizure memo shows that 62,080 bottles of Eskuf cough syrup containing Codeine Phosphate were seized from the exclusive possession of both the accused petitioners. The F.S.L. report on the seized cough syrup samples is yet to be received. The contents of FIR shows that on interception of the seized truck and on demand by police, the accused petitioners produced documents such as GST Invoice, e-way bills and transport receipt, which were seized. The investigating officer has noted that the aforesaid consignment of seized cough syrup bottles were dispatched by Daffodil Drugs Pvt. Ltd, Gangarampur Road, Banerjee Para, Maheshtala to A.K. Drug Distributors, Silchar, Assam through Road King Pvt. Ltd. transporter, Kolkata as per the seized GST Invoice, e-way bills and transport receipt. The investigation reveals that the seized cough syrup bottles were meant for sale in the western part of India, meaning thereby not for sale in the North-eastern region.

Copy of all the aforestated documents are annexed to the instant bail

application. The investigating officer has got the documents verified from the competent authority and found to be valid as per the provisions of the Assam Goods and Services Tax Act, 2017. The Court of learned Special Judge (N.D.P.S. Act), Dhubri in his order, dated 15.03.2023 recorded that as per the report of the Assistant Commissioner of Taxes, Dhubri, dated 28.02.2023, the invoices and e-payment bills sent for verification found to be valid.

On the other hand, by filing Misc. Case No.60/2023, before the aforesaid court, the Proprietor of A.K. Drug Distributors, Silchar has claimed to be the consignee of the seized cough syrup bottles and accordingly, prayed for custody of the same by imposing any conditions(s). The learned Court appears to have been awaiting for the F.S.L. report and thus, pending for consideration.

Having heard the learned counsel of both sides and consideration of the averments made in the application supported by all relevant documents along with the materials on the case diary and despite the bar in Section 37 of the N.D.P.S. Act, this Court is of the considered opinion that subject to final outcome in investigation, for ends of justice further continuation of detention in judicial custody of the accused petitioners in the interest of the ongoing investigation may not be warranted.

Accordingly, it is provided that each of the accused petitioners, named above, shall be released on bail of **Rs.1,00,000/- (Rupees One Lakh)** only with two sureties of like amount to the satisfaction of the learned **Special Judge (NDPS), Dhubri** subject to the following conditions-

- i) That the accused petitioners shall cooperate with the investigating officer as and when required;
- ii) That the accused petitioners shall not directly or indirectly make

any inducement, threat of promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts either to the investigating officer or to the Court; and

- iii) That the accused petitioners shall refrain from committing any similar offence in future of which they are accused or suspected of commission.

Breach of any of the above conditions shall render cancellation of the bail in accordance with law.

Return the case diary.

This disposes of the bail application.

JUDGE

Comparing Assistant