

GAHC010094932023



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

Case No. : Bail Appln./1573/2023

SYED ANISH SHAH
S/O SYED KARIM SHAH R/O HAOREIBI TUREL AHANBI DAM MATHAK P.S.
LILONG DIST. THOUBAL MANIPUR PIN 795130

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : M K BORAH

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI

ORDER

Date : 28.06.2023

Heard Mr. M.K. Borah, learned counsel for the petitioner. Also heard Mr. D.P. Goswami, learned Additional Public Prosecutor for the State/respondent.

2. This is an application filed under Section 439 Cr.P.C., seeking bail by the petitioner, namely, **Syed Anish Shah**, in connection with NDPS Case

No. 86/2021, registered under Section 21(c)/29 of NDPS Act, 1985, pending before the learned Special Judge, Diphu, Karbi Anglong.

3. The case of the prosecution is that on 19.09.2021 at about 9 p.m., on receipt of a secret information that a large quantity of suspected drugs/heroin were being transported from Manipur in a Bolero vehicle bearing Regd. No. MN-01-AK-4789 keeping the same concealed inside the said vehicle. Accordingly, a search was made and during search, 30 numbers of soap boxes having identical heroin kept concealed in the backlight assembly of the said vehicle. The net quantity of the identical heroin so far seized were 412.35 grams. The driver of the said vehicle P Amjad Ali and other occupants Syed Anish Shah were detained by the police and accordingly, a case was registered vide Dillai P.S. Case No. 42/2021 and both the accused persons were accordingly arrested. After completion of investigation, charge-sheet was submitted against both the accused persons under Section 21(C)/29 of NDPS Act and charge was framed accordingly.

4. The learned counsel for the petitioner has submitted that accused P Amjad Ali was granted bail by the learned trial court on the ground of illness of his wife and the present petitioner who was no way connected with the instant case has been languishing in jail for last two years. Though, the petitioner has preferred bail application before the learned trial court but which was rejected. It is also submitted that nothing has been recovered from the possession of the accused/petitioner, he was just a passenger in the said vehicle and he did not have even knowledge of carrying of commercial quantity of drugs by the co-accused person.

5. It is also submitted that Section 42(2) of the NDPS Act empowered

officer who takes down any information in writing or records the grounds under proviso to Section 42(1) should forthwith send a copy thereof to his immediate superior. If there is total non-compliance of this provision, the same would affect the prosecution case. In the instant case, the officer who received the information did not record the same and send the information to the superior officer as required under Section 42(1) of the NDPS Act which vitiates the entire proceedings.

6. In support of his submission, the learned counsel for the petitioner has relied upon a case law- 2001 CriLJ 1152 [Raj Kumar Kapoor @ Kaka vs State (Delhi).]

7. In response, the learned Additional Public Prosecutor for the State has submitted that altogether 8(eight) witnesses were examined by the learned trial court and the witnesses have identified the present petitioner who was travelling in the said vehicle and they also stated that in the said vehicle, commercial quantity of drugs/heroin were recovered in which the present accused/petitioner was travelling. It is also submitted that the trial is about to complete and only two witnesses are yet to be examined. Under such backdrop, bail cannot be granted to the accused/petitioner who is originally hailing from Manipur.

8. I have considered the submissions made by the learned counsel for the parties and I have also perused the deposition of witnesses recorded by the learned trial court.

9. It appears from the evidence of witnesses that they were present when the vehicle was intercepted near Lahorijan police out post under Dillai police station. On being searched, 30 numbers of soap boxes

containing commercial quantity of heroin like powder was recovered inside the backlight of the said vehicle. It also appears from the evidence of witnesses that two passengers were travelling in the said vehicle, one was driver and other is the present petitioner.

10. Regarding violation of Section 42(1) and 42(2) of NDPS Act, the learned trial court shall consider the matter at the time of delivery of judgment.

11. On consideration of the matter in its entirety, this Court is of the view that granting of bail at this stage may cause delay in further proceeding of the case. Hence, prayer for bail is rejected. However, learned trial court is directed to dispose of the matter within one month from the date of receipt of the order.

12. It is made clear that any observation made in this order shall be limited to this bail application only.

13. In view of above, the bail application stands disposed of.

JUDGE

Comparing Assistant