

GAHC010098712023



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

Case No. : Bail Appln./1685/2023

BIPIN KUMAR
S/O DHANESWAR SAHANI
VILL- PRANPUR
P.S. TISIAUTA,
DIST. BAISHALI, BIHAR

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : M. RAHMAN

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

04.08.2023

1. Heard Mr. R. P. Sharmah, learned senior counsel assisted by Mr. M. Rahman, learned counsel for the petitioner. Also heard Mr. R. J. Baruah, learned

Additional Public Prosecutor representing the State of Assam.

2. This application under Section 439 of the Code of Criminal Procedure, 1973 has been preferred by the petitioner, namely, *Bipin Kumar* who has been detained behind the bar since 28.08.2022 in connection with Special (NDPS) Case No. 125/2022 corresponding to Nilambazar P.S. Case No. 129/2022 under Section 20(b)(II)(C)/29 of the NDPS Act, 1985 which is pending before the Court of learned Sessions Judge, Karimganj.

3. The accusation in this case is that on 27.08.2022, one Pradip Kumar Singha, S.I. of Police of Nilambazar Police Station lodged an FIR before the Officer-in-Charge of Nilambazar Police Station, *inter-alia*, alleging that on 27.08.2022 at about 3.30 p.m., Officer-in-Charge of Nilambazar Police Station received an information that three persons were carrying suspected Ganja from Tripura by train and they got off at Nilambazar market. Accordingly, a search operation was conducted and three accused persons named in the FIR including the present petitioner were intercepted in front of Nilambazar Police Station and their belongings were searched. During search operation, total 33.351 kgs. of Ganja kept in different bags were recovered from the possession of the three accused persons. On receipt of the said FIR, Nilambazar Police Station Case No. 129/2022 was registered and investigation was initiated. Ultimately, on completion of the investigation, the charge-sheet was laid against the present petitioner and the co-accused person under Section 20(b)(II)(C) of the NDPS Act, 1985.

4. It is submitted that since the date of arrest, the present petitioner is detained behind the bar and facing trial under detention.

5. Learned counsel for the petitioner has submitted that the petitioner

is patient of Tuberculosis and undergoing treatment at Silchar Medical College and Hospital since 16.12.2022 and due to lack of proper care of his health in the jail custody, his health condition is deteriorating day by day. The learned counsel for the petitioner has also submitted that the petitioner is innocent and not involved in offence alleged against him in the FIR. It is also submitted by learned counsel for the petitioner that even for argument's sake, if it is assumed that the petitioner was found in possession of any suspected Ganja, it appears from the seizure list that only 2.183 Kgs. was recovered from the bag which was belonging to the petitioner, hence, learned counsel for the petitioner submits that the embargo of Section 37 of the NDPS Act, 1985 is not applicable to the present petitioner.

6. On the other hand, learned Additional Public Prosecutor has submitted that charge has already been framed against the present petitioner under Section 20(b)(ii)(C)/29 of the NDPS Act, 1985 and embargo of Section 37 of the NDPS Act, 1985 would be applicable to the present petitioner and on that ground he has opposed the grant of bail to the present petitioner.

7. I have considered the submissions made by learned counsel for both sides as well as perused the materials available on record including the scanned copy of the Special (NDPS) Case No. 125/2022.

8. It appears that on 08th May, 2023 charges under Sections 20(b)(ii)(C)/29 of the NDPS Act, 1985 were framed against the present petitioner along with the other co-accused, hence, at this stage, it would be difficult to come to a finding, at this stage, that there are reasonable grounds for believing that the petitioner is not guilty of such offence. Hence, embargo of Section 37 of the NDPS Act, 1985 would be applicable in the instant case.

9. Learned counsel for the petitioner has also cited a ruling of Hon'ble Supreme Court of India in "**Salim Valimamad Majothi –Vs- State of Gujarat**" [order dated 13.03.2023 passed in SLP (Crl.) 6972/2023] wherein Hon'ble Apex Court after considering that the accused petitioner has been put on ventilator and there is no proper medical facility for the treatment of the accused petitioner in jail hospital, granted interim bail to the accused. In the instant case, the up-to-date health status report of the present petitioner has been sent to this Court by the Superintendent of District Jail, Karimganj with a forwarding letter No. DJK.06/2023/952 dated 26th July, 2023 and on perusal of the medical report of the present petitioner furnished by the Medical and Health Officer, Jail Hospital, District Jail, Karimganj, it appears that the present petitioner has been diagnosed as a case of permanent Tuberculosis as well as Infective Spondylodiscitis and he is presently under medication and his vitals are within normal limits. There is no mention in the report of Jail Doctor that there is any lack of proper medical facility in the Jail Hospital or that it is difficult to treat the ailment of the present petitioner while he is in custody. Hence, the present medical condition of the present petitioner, in itself, does not justify overriding the embargo of Section 37 of the NDPS Act, 1985 in this case.

10. For reasons stated above, this Court is constrained to reject the prayer for bail of the present petitioner at this stage.

11. However, considering the fact of ailment of the present petitioner as well as considering the fact that he has been detained behind the bar for last 341 days, the trial court is hereby directed to expedite the trial of the Special (NDPS) Case No. 125/2022 and finish the trial at the earliest.

12. The Superintendent of District Jail, Karimganj is also directed to

provide all necessary medical treatment to the present petitioner for ailments from which he is suffering while in custody.

13. Let a copy of this order be sent by Registry of this Court to the Court of learned Sessions Judge, Karimganj as well as to the Superintendent of District Jail, Karimganj for compliance.

14. With above observation, this instant bail application is disposed of.

JUDGE

Comparing Assistant