

GAHC010113372023



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

Case No. : Bail Appln./1846/2023

TRIDIP GOSWAMI
S/O LATE CHITA RANJAN GOSWAMI
R/O BISHNU NAGAR, WARD NO. 8, P.S. GOALPARA, DIST. GOALPARA,
ASSAM, PIN-783101

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. S C KEYAL

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

Date : 19.06.2023

- 1.** Heard Mr. S. C. Keyal, learned counsel for the petitioner. Also heard Mr. D. Das, learned Additional Public Prosecutor.
- 2.** This case is fixed for delivery of orders today.
- 3.** This is an application 439 of the Code of Criminal Procedure, 1973 filed by the applicant, namely, *Sri Tridip Goswami*, who has been detained behind the

bars since 10.04.2023, in connection with Mankachar P.S. Case No. 152/2023, under Section 22(c) of the NDPS Act, 1985.

4. The accusation in this case is that on 28.03.2023 one- Abdul Kalam Azad, ASI of Mankachar Police Station lodged an FIR before the Officer in Charge of Mankachar Police Station, *inter alia*, alleging that on 26.03.2023, at about 9.30 p.m. while the informant was performing patrolling duty, he noticed that one white colour container vehicle coming from Meghalaya side. On suspicion, the first informant signaled to the said vehicle to stop, however, the driver of the said vehicle disobeyed the signal and fled away. The first informant chased the said vehicle but in vain, however, he could notice the last four digits of the registration number which was noticeable in the number plate which were 3841. Thereafter, the first informant informed the matter to the Officer-in-Charge of Mankachar Police Station. Later on after thorough inquiry, the said container vehicle was traced out on the same day, i.e., 26.03.2023 at about 9.00 p.m. near a petrol pump. When the said vehicle was searched, it was found that it was carrying carton boxes of medicine. On search, prohibited psychotropic substance, namely, SPSPHEN+ capsule 6 strip (144 nos.) weight- 112.18 gm and 6 trip SPAScore VON Plus (144) nos. weight 103.88 gm approx were found inside the carpet of the footboard of the vehicle. Total 288 nos. of capsules and weighing 216.06 gms were found. The capsules were properly seized in presence of witnesses.

5. On receipt of the said FIR, Mankachar Police Station Case No. 152/2023 under Section 22(c) of the NDPS Act, 1985 was registered and investigation was initiated.

6. The learned counsel for the petitioner has submitted that the present petitioner is a business man engaged in the business of courier service of

different agencies such as ASTC, Digital Courier Service, First Flight Courier Ltd., Cyber Courier, Arindam Courier and Jai Shree Ganesh Express in the district of Gaolpara. It is also submitted that after registration of the aforementioned Police Station case, the Investigating Officer visited the office of the present petitioner, where he was carrying his business of courier service, inquired about one consignment of medicine received by his courier from Guwahati bearing Consignment No. 9920 booked by Adabari Drug Distributor and delivered to Raushan Drug Distributor, Goalpara.

7. Learned counsel for the petitioner has submitted that the petitioner fully cooperated with the Investigating Officer and produced all the documents relating to receipt and delivery. It is submitted that the delivery register showed that the goods were received by one Mubarak having Mobile No. 9854967033 on behalf of M/S Raushan Drug Distributor. However, the Investigating Officer arrested the present petitioner in connection with the said case on 10.04.2023 and since then the petitioner is languishing behind the bar.

8. Learned counsel for the petitioner has submitted that the petitioner is a courier agent his role and function is to receive the consignments and deliver it to recipient as per the consignment note and keep the record of the delivery.

9. Learned counsel for the petitioner has also produced one register purported to be the delivery register of Jyoti courier service and on perusal of the noting in the said register, it appears that the goods against consignment note No. 9920 were delivered to one Mubarak having Mobile No. 9854967033.

10. It is also submitted that the petitioner was unaware about the contents of the goods inside the cartoons as same were sealed packed and the petitioner is not required to open the carton box. It is further submitted that the petitioner is

innocent businessmen engaged in the business of courier service, he has been arrested merely on the basis of suspicion and has been languishing behind the bar since last 45 days.

11. The learned counsel for the petitioner has also submitted that the petitioner being in the business of courier service was only carrying consignment of medicine in sealed cartoons and was unaware of the fact that the said consignment also contained any prohibited psychotropic substances and, therefore, he was not in conscious position of the said psychotropic substances and, therefore there are reasonable grounds for believing that he is not guilty of the offence alleged in the FIR.

12. In support of his contention, learned counsel for the petitioner has cited the rulings of Hon'ble Supreme Court of India in ***Bharat Chaudhary –Vs Union of India*** reported in **2021 15 Scale 178** as well as judgment of this Court in ***Lorik Ram –Vs- The State of Assam*** (order dated 27.05.2022 in Bail Application No. 965/2022).

13. The learned counsel for the petitioner has also submitted that as the petitioner is only a businessman engaged in the business of courier service, without any criminal antecedent and he is unlikely to commit any offence even if granted bail in this case.

14. On the other hand, Sri D. Das, learned Additional Public Prosecutor vehemently opposed the prayer for grant of bail on the ground that there are materials in the case diary to show that the present petitioner is the owner of courier agency in Goalpara and he used to receive the consignment of prohibited drugs dispatched through fake address and used to deliver the same to the receiver, namely, Shahajad @ babu and Rasid.

15. On perusal of the case diary produced by the learned Additional Public Prosecutor, it appears that till now seven accused persons have been arrested, in connection with Mankachar P.S. Case No. 152/2023 for their involvement in the alleged offence in different capacities. However, if we peruse the case diary thoroughly, the only material, on record, against the present petitioner is that he is running a Courier Service Centre at Goalpara town since last 25 years and he used to receive goods from various couriers service and deliver it to the addressee after verification of the Aadhar card of the recipient. It also appears that his courier service centre had received consignment of medicine from Adabari Drug Distributor through Shree Ganesh Express Courier and the consignment address to Raushan Drug Distributor which was received from his courier service by one Chintu @ Mobarak Hussain. The consignment of medicine use to come in medicine carton box and there is nothing in the case diary to show that the present petitioner was aware about the contents inside the said cartons. There is also no material, at this stage, even after more than 45 days of detention of the present petitioner, to show that the present petitioner was aware about the illegal nature of the contraband seized in connection with Mankachar P.S. Case No. 152/2023 or that he was in conscious possession of the seized contraband.

16. In the instant case, the seized contraband was not found from the possession of the present petitioner. Moreover, there is no material on record to suggest that he was aware about the fact that the contraband seized in the instant case was containing prohibited psychotropic substances, hence, he may not be regarded as having conscious possession of the same.

17. In view of the above, on the basis of material available on the case diary, this Court is of the considered opinion that there are reasonable ground to

believe that though the courier service centre of the petitioner might have been utilized by unscrupulous elements for delivery of prohibited substances, however, there is no material in the case diary to suggest that the petitioner was aware or had knowledge about the contents of the carton boxes that it might contain prohibited drugs, hence, this Court is of the considered opinion that the embargo of Section 37 of the NDPS Act, 1985 will not be applicable in respect of the present petitioner. Petitioner has already been detained behind the bars for more than 45 days in the meanwhile the investigation has also fairly progressed. Considering the period of detention already undergone by the present petitioner as well as progress made in the investigation, his further custodial detention does not appear to be necessary for the fair completion of investigation of the Mankachar Police Station Case No. 152/2023.

18. In view of the above, the present petitioner, namely, *Sri Tridip Goswami*, is allowed to be released on bail of Rs.50,000/- (Rupees Fifty Thousand) only with two sureties of like amount to the satisfaction of the learned Special Judge, South Salmara, Mankachar, subject to the following conditions:-

- (1) That the petitioner shall co-operate with the Investigating Officer in fair completion of the investigation of Mankachar P.S. Case No. 152/2023.
- (2) That the petitioner shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Police Officer or the Court
- (3) That, while on bail, the petitioner shall not indulge in any offence similar to that with which he is charged in the instant case.

19. This bail application is accordingly disposed of.

20. Send back the case diary of Mankachar P.S. Case No. 152/2023 and also give back the delivery register, which was produced by learned counsel for the petitioner and during the hearing, to him after keeping the photo copy of the relevant page of the said delivery register, in this case record.

JUDGE

Comparing Assistant