

GAHC010117382023



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

Case No. : Bail Appln./1924/2023

PAVEI SAICHAMIA
S/O- JOHANTHAN SAICHAMIA, R/O- SARANAMI KHAIKHO VILLAGE, P.O.
AND P.S. TADUBI, DIST.- SENAPATI, MANIPUR

VERSUS

THE STATE OF ASSAM
REP. BY P.P., ASSAM

Advocate for the Petitioner : MS. P BHATTACHARYA

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MANASH RANJAN PATHAK

ORDER

22-06-2023

Heard Ms. P Bhattacharya, learned counsel for the petitioner and Mr. M. P. Goswami, learned Additional Public Prosecutor, Assam for the State.

2. By this application under Section 439 CrPC the petitioner, namely, **Pavei Saichamia**, is seeking bail in Khatkhathi Police Station Case No. 61/2022, corresponding to G.R. No. 167/2022 registered under Sections 21(C)/24/29 of the Narcotic Drugs and Psychotropic Substances (NDPS) Act, 1985, wherein, he was arrested on 24.07.2022 and is in custody

since then.

3. Petitioner stated that he is a resident of Saranami Khaikho Village, Tadubi, District-Senapati, Manipur and is a cultivator by profession. It is stated that the petitioner along with his sister on 24.06.2022 were proceeding towards Bokajan to purchase piglet and chicken from Shariajan Bazar for farming purpose on an Eeco Van vehicle bearing Registration No. NL-07-CB-2827 driven by him with another person with him namely, Avi @ Angela. Another Maruti Suzuki Gypsy Vehicle bearing Registration No. NL-07-CL-5586 driven by accused Khavei @ Lucky was coming behind their said Eeco Van. In a police Check Post at Gautam Basti around 04:30 PM on 24.06.2022 police stopped both the vehicles and during search police recovered Narcotic Substances suspected to be of Heroine weighing 666.28 grams from the said Maruti Suzuki Gypsy Vehicle that was driven by Khavei @ Lucky. Petitioner stated that he came to know that the driver of the said Gypsy vehicle was known to them and was of the same locality and as such, police suspected the petitioner and his sister to be in conspiracy with the driver of the said Gypsy in carrying such Narcotic Substances and police arrested them along with the driver of the said Gypsy.

4. Petitioner stated that the Narcotic Substances was recovered from the said Maruti Suzuki Gypsy Vehicle bearing Registration No. NL-07-CL-5586 driven by Khavei @ Lucky and that he was not in conscious possession of said Narcotic Substances and that he was also not at all involved in committing any such offence with the driver of the said Gypsy Khavei @ Lucky and that he had no knowledge that the other vehicle was carrying Narcotic Substances and contraband products.

5. Police seized those articles and apprehended the petitioner and other two persons. After receipt of the FIR of the case filed by one Sub-Inspector of Khatkhathi Police Station before the Officer-in-Charge of Khatkhathi Police Station on 24.07.2022 the same was registered as Khatkhathi P.S. Case No. 61/2022 under Sections 21(C)/24/29 of the NDPS Act, 1985 and they were apprehended and produced before learned Sub-Divisional Judicial Magistrate (M), Bokajan, Karbi-Anglong on 25.07.2022.

6. After completion of investigation of the case, Khatkhathi Police submitted the Charge-Sheet/Offence Report in said Khatkhathi P.S. Case No. 61/2022 on 31.10.2022 against the

petitioner and other two accused. Subsequently after filing the Charge-Sheet in the case, said G.R. Case No. 167/2022 arising out of Khatkhathi P.S. Case No. 61/2022 was re-numbered as NDPS Case No. 88/2022. Thereafter, the learned Special Judge (NDPS), Karbi-Anglong, Diphu on 22.12.2022 framed charge under Section 20(C)/29 of the NDPS Act against the petitioner and those two accused persons in said NDPS Case No. 88/2022 fixing the matter for production/evidence.

7. Petitioner stated that the said NDPS Case No. 88/2022 did not progress and it remained in the same stage for production/evidence since 04.01.2023.

8. Petitioner stated that since 24.07.2022 he is in custody though he is no way connected with the case as said Narcotic Substances was not recovered from his conscious possession but was recovered from said Maruti Suzuki Gypsy Vehicle that was driven by Khavei @ Lucky.

9. Petitioner's earlier Bail Application No. 281/2023 in said NDPS Case No. 88/2022 was earlier rejected by the Court on 10.03.2023, wherein, the petitioner raised the issue that the said NDPS Case No. 88/2022 did not progress and the Court found that not a single prosecution witness out of five listed witnesses were examined.

10. From the Offence Report as well as the Seizure List Nos. M.R. No. 94/2022 and M.R. No. 95/2022 (seized and prepared in presence of witnesses), it is seen that suspected Narcotic Substances and Articles from the possession of the accused Khavei @ Lucky driving a Maruti Suzuki Gypsy Vehicle bearing Registration No. NL-07-CL-5586 were recovered, amongst those, were 49 nos. of plastic soap box like containers containing one polythene packet each that together contained 666.28 grams without the plastic soap box containers; whereas suspected Narcotic Substances and Articles were found inside the white colour Suzuki Eeco Van bearing Registration No. NL-07-CB-2827 that was driven by the accused/petitioner, Pavei Saichamia kept concealed in a plastic bag, amongst those, were 50 nos. of plastic soap box like containers in one polythene packet, together contained 663.96 grams without the plastic soap box containers.

11. The FSL Report dated 21.09.2022 issued by the Directorate of Forensic Science, Assam with regard to the seized powdery substance recovered from the said Maruti Suzuki

Gypsy Vehicle as well as Suzuki Eeco Van reflect that the same gave positive test for Heroine and the percentage of Heroine was found to be 59.01.

12. The petitioner was driving the said Eeco Van bearing Registration No. NL-07-CB-2827 from where 663.96 grams of Heroin were recovered and the petitioner is totally silent in that regard.

13. From the perusal of the records of the case and the materials therein regarding involvement of the petitioner pertaining to the alleged crime with regard to NDPS Case No. 88/2022 arising out of Khatkhathi Police Station Case No. 61/2022 that is pending before the learned Special Judge (NDPS), Karbi-Anglong, Diphu, where the case is fixed for production/evidence, the Court is of the prima-facie view and satisfied that there are no reasonable grounds to believe that the petitioner is not guilty of such offence till it is proved in the appropriate Court after recording of evidence.

14. Accordingly, this bail application of the petitioner, namely, **Pavei Saichamia**, in said NDPS Case No. 88/2022 arising out of Khatkhathi Police Station Case No. 61/2022 stands rejected.

15. Return the Case Diary.

JUDGE

Comparing Assistant