

GAHC010122862023



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

Case No. : Bail Appln./1987/2023

VAKIL RAY
S/O SRI AMRILAL RAY, R/O RUSTAMPUR, P.O.-RUSTAMPUR, P.S.-
RAHURPUR, DIST-VAISHALI, BIHAR, PIN-801303

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

Advocate for the Petitioner : MR. M SARANIA

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

Date : 20.07.2023

- 1.** Heard Mr. M. Sarania, learned counsel for the petitioner, also heard Mr. K. K. Das, learned Additional Public Prosecutor for the State.
- 2.** This application under Section 439 of the Code of Criminal Procedure, 1973 has been filed by the petitioner, namely, *Sri Vakil Ray*, who has been detained behind the bar since 23.03.2023 (119 days), in connection with Guwahati GPRS Police Station Case No. 33/2023, under Section 20(b)(ii)(c)/29

of the NDPS Act, 1985.

3. The accusation in this case is that on 22.03.2023 one Arambam Surchand Singh, ASI lodged an FIR before the Officer-in-Charge of GRPS Police Station, *inter alia*, alleging that on 21.03.2023 a search operation was conducted in the platform of Kamakhya Railway Station and during the search drive, at about 5.45 p.m., two persons were found carrying two separate bags in suspicious manner and, accordingly, they were intercepted and searched and it was found that the present petitioner was carrying total 11 kgs. of suspected Ganja and another person was carrying 19 kgs. of suspected Ganja. On receipt of the said FIR, Guwahati GRPS Case No. 33/2023 under Section 20B(ii)(C) was registered.

4. The learned counsel for the petitioner submits that though the instant case has been registered under Section 20(b)(ii)(C) of the NDPS Act, 1985, however, total quantity of Ganja which was recovered from the present petitioner is only 11 kgs. which is much less than commercial quantity (the possession of ganja beyond more than 20 kgs. is regarded as commercial quantity). Hence, the learned counsel for the petitioner submits that the present case ought to have been registered, against the present petitioner, under Section 20(b)(ii)(B) instead of 20(b)(ii)(C) of NDPS Act, 1985. The learned counsel for the petitioner also submits that there is no material on record which attracts Section 29 of the NDPS Act in the instant case.

5. The learned counsel for the petitioner submits that the petitioner has been detained behind the bar since 23.03.2023 (139 days) and as apparently his case falls under Section 20(b)(ii)(B), he should have been released on completion of 60 days of detention period. learned counsel for the petitioner also submits that the co-accused Anarjeet Kumar, who was arrested along with the present petitioner and from whom 19 KG of ganja was recovered, has already been

granted bail by a coordinate bench of this court, in BA No 1988/2023, relying on the judgment of Hon'ble Supreme Court of India in "*Amarsingh Ramjibhai Barot vs State of Gujarat*" reported in (2005)7 SCC 550, holding that in the instant case though both the accused were found together, but individually carrying different quantities of contraband which was recovered from them and there is no evidence to suggest that there was any abetment/criminal conspiracy within the meaning of section 29 of the NDPS Act, 1985.

6. On the other hand, learned Additional Public Prosecutor submits that from the case diary, which is available before the court, it appears that both the present petitioner and co-accused Anarjeet Kumar were found together at the Kamakhya railway station platform carrying different quantities of ganja i.e., 11 KG and 19 KG respectively at the same time and same place, hence they were jointly and consciously possessing 30 KG of ganja, when they were arrested. Learned Additional Public Prosecutor, therefore, submits that the embargo of Section 37 of the NDPS Act, 1985 would be applicable in the instant case and hence opposes grant of bail to the present petitioner.

7. I have considered the submissions made by learned counsel for both sides and also perused the materials available in the case record including the case diary. Though, the one single seizure list (M.R. No. 35/23) was prepared by the Investigating Officer in Guwahati GPRS Police Station Case No. 33/2023 without specifically showing from whose possessions how much quantity of Ganja was seized. However, on perusal of the FIR, it appears that it is specifically stated there in that 11 kgs. of Ganja was seized from the present petitioner and 19 kgs. of Ganja was seized from Anarjeet Kumar. The co-accused has already been granted bail by a Co-ordinate Bench of this Court holding that the said accused was found possessing only 19 kgs. of suspected Ganja and hence

embargo of Section 37 would not be applicable in his case. Without differing from the view taken by the Co-ordinate Bench of this Court in case of Anarjeet Kumar, I am of the considered view that as the present accused was possessing 11 kgs. of Ganja, mere fact that he was found together with another co-accused from whom 19 kgs. of Ganja was seized would not make the seizure of suspected Ganja from him to be of commercial quantity as it is specifically mentioned in the FIR that only 11 kgs. of Ganja was recovered from the present petitioner which is less than commercial quantity and as the petitioner has already undergone detention of 119 days in connection with Guwahati GRPS Police Station Case No. 33/2023 and as the co-accused has already been granted bail, the present petitioner is also entitled to be released on bail considering the period of detention undergone by him. This Court also agrees with the view taken by Co-ordinate Bench in the case of co-accused that the embargo of Section 37 of NDPS would not be applicable in the instant case.

8. In view of the above, the petitioner, namely, *Sri Vakil Ray* is directed to be released on bail of furnished a bail bond of Rs.1,00,000/- (Rupees One Lakh) only with two sureties of like amount, one of whom shall be a Government Employee, to the satisfaction of the learned Special Judge, Kamrup (M), Guwahati, subject to the following conditions that:

- (i) That the petitioner shall cooperate with the Investigating Officer of said Guwahati GRPS Case No. 33/2023 and shall appear before the Investigating Officer as and when so required by the investigation Officer;
- (ii) That the petitioner shall not leave the State of Assam without obtaining prior permission from the concerned Investigating Officer of Guwahati GRPS Case No. 33/2023,

(iii) That the petitioner shall also furnish his address and Mobile Number to the Investigating Officer and shall also intimate him, if there is any change in address or change in Mobile Number in future;

(iv) That the petitioner shall not, directly or indirectly, make any inducement, threat to anyone or promise to any person acquainted with the facts of the case so as to dissuade her/him from disclosing such facts to the Court or to any police officer.

9. Any violation of any of the aforesaid terms and conditions would be a good ground for cancellation of the bail granted to the present petitioner.

10. With the above observation, this instant bail application is hereby disposed of stands.

JUDGE

Comparing Assistant