

GAHC010125042023



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

Case No. : Bail Appln./1983/2023

RAJESH SAHA
S/O- LATE HARI MOHAN SAHA,
PERMANENT ADDRESS-
R/O- BONGAIGAON, M.G. ROAD,
P.O. AND P.S.- BONGAIGAON,
DIST.- BONGAIGAON, ASSAM.
PRESENT- R/O- VIVEKANANDA PURAN PATH,
BHASKAR NAGAR, P.S.- FATASIL AMBARI,
GUWAHATI, DIST.- KAMRUP(M).

VERSUS

THE STATE OF ASSAM
REPRESENTED BY PP, ASSAM.

Advocate for the Petitioner : MR R BARMAN

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

Date : 06.07.2023

- 1.** Heard Ms. P. Das, learned counsel for the petitioner, also heard Mr. R. J. Baruah, learned Additional Public Prosecutor for the State.
- 2.** This case is fixed for delivery of orders today.

3. This application under Section 439 of the Code of Criminal Procedure, 1973 has been filed by the petitioner, namely, *Rajesh Saha*, who has been detained behind the bar since 19.04.2023, in connection with Mankachar Police Station 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 coloured 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 sped 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 grams were found. The said capsules were seized by ASI, Abdul Kalam Azad in presence of witnesses vide M.R. No. 57/2023 on 28.03.2023.

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. It also appears that during the course of investigation of Mankachar P.S. Case No. 152/2023 on 12.04.2023, some more contraband, namely, (1) *SPSPHEN+ Capsules – 3600 Nos. (1 Strip- 24 Nos. Capsules weight 19.28 gm., Total- 150 Strip (150X19.28)= 2892 gms., (2) Nitracel- 10 Tablets- 1200 Nos. (1 Strip- 100 tablets weight- 36.29 – total 12 Strip (12X36.29)= 435.48 gm., (3) KOF-T Cough Syrup- 100 Nos. (1 cartoon) 100 ml. and (4) ONEREEX Cough Syrup- 40 nos.- 100 ml* were seized from possession of one Mehtab Alom from his residence at 2 No. Pubergaon under Mankachar Police Station. Though this was a separate seizure made after getting information during investigation of Mankachar P.S. Case No. 152/2023, no separate FIR was lodged in connection with this seizure and it is shown to have been seized in connection with Mankachar Police Station Case No. 152/2023 only.

7. Ms. P. Das, learned counsel for the petitioner submitted that the petitioner is a Zonal Manager of the Anesthesia and Critical Care Division of Themis Medicare Ltd. and is responsible for promoting sales and marketing of products manufactured by Themis Medicare Lt. in the North-East Region. It is also submitted that the Themis Chemical Limited is a duly incorporated Company under the Companies Act, 1956 and in support of her submission, learned counsel has also produced the certificate of incorporation of Themis Chemical Limited. Learned counsel for the petitioner submitted that total quantity of seizure made on 28.03.2023 is only 216.06 grams whereas as per the Notification issued vide SO-1055 (E) dated 18th October, 2001 relating to specification of small quantity and commercial quantity of narcotic drugs and psychotropic substances, the commercial quantity of Tramadol would be any quantity greater than 250 grams, whereas in the instant case the total weight of

seized contraband was 216.06 grams only. The learned counsel for the petitioner has also submitted that though in the second seizure which was made on 12.04.2023 from the residence of Mehtab Alom, the quantity of seized contraband was more than commercial quantity, however the present petitioner is not connected with the second seizure made in this case on 12.04.2023 in any manner.

8. On the other hand, learned Additional Public Prosecutor has submitted that there are incriminating material against the present petitioner in the case diary and that though the quantity of contraband which was seized on 28.03.2023 is 216.06 grams only, however, the quantity of seized contraband on 12.04.2023 is much more than commercial quantity and, therefore, embargo of Section 37 comes into play even against the present petitioner.

9. Learned Additional Public Prosecutor has also submitted that the present petitioner is involved in the racket which is involved in illegal business of drugs in organized manner and hence opposed the grant of bail to the present petitioner.

10. On perusal of case diary, it appears that the FIR dated 28.03.2023 was lodged in connection with the seizure made, of illegal contraband on 28.03.2023 from a vehicle bearing Registration No. AS-01-EQ-8167. Whereas, seizure of contraband on 12.04.2023 was made from the residence of one Mehtab Alom at No. 2 Pubergaon under Mankachar Police Station. It is also surprising to note that though the second seizure vide MR No.76/23 was made on 12/04/2023 at 11 PM and Mehtab Alom was arrested on 13/04/2023 at 8.00 a.m., in the forwarding report of accused Mehtab Alom dated 13/04/2023, which was submitted by the Investigating Officer before the learned Chief Judicial Magistrate, South Salmara, there is no mention about the second seizure of

contraband which was made on 12/04/2023 at 11 PM. It appears from the case diary that the information about contraband which were seized on 12/04/2023 was received through secret sources, however, there is no evidence in the case diary to link the second seizure with the contraband which were seized from the vehicle No. AS 01 EQ 8167, on 28/03/2023. As the second seizure was made on the basis of information received through secret sources and was made from the possession of a different accused persons, at a different location, and no evidence could be collected to link the second seizure with the first seizure which was made from the vehicle No. AS 01 EQ 8167, on 28/03/2023, this court is of the opinion that a separate FIR ought to have been registered with regard to the second seizure which was made on 12/04/2023.

11. Moreover, on perusal of the case diary, it appears that though there are materials against the present petitioner to implicate him in the seizure of contraband which was recovered on 28.03.2023, however, there is no material, on record, to link him with the seizure which was made from the house of Mehtabl Alom. As the weight of contraband, which included Tramadol, which was seized on 28.03.2023, is less than that of commercial quantity, the embargo of Section 37 of the NDPS Act, 1985 would not be applicable in case of said seizure against the present petitioner. The present petitioner has already completed 77 days of detention behind the bar, who has been interrogated by the Investigating Officer and his statement under section 161 of the Code of Criminal Procedure, 1973 has also been recorded. Considering these facts, this court is of considered opinion that his further custodial detention may not be necessary for fair completion of the investigation of Mankachar Police Station Case No. 152/2023, if he cooperates with the Investigation Officer of the said case.

12. In view of the above, the present petitioner, namely, *Rajesh Saha* 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 learned Special Judge, South Salmara, Mankachar, subject to the following conditions:-

(1) That the petitioner shall appear before the Investigating Officer of Mankachar Police Station Case No. 152/2023 within 7(seven) days after his release on bail and shall further appear before the Investigating Officer as and when called upon to do so by the Investigating Officer of Mankachar Police Station 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 the petitioner shall not indulge in any offence similar to that with which he is charged in this case while remaining on bail.

13. This bail application is accordingly disposed of.

14. Send back the case diary of Mankachar P.S. Case No. 152/2023 along with a copy of this order.

JUDGE

Comparing Assistant