

GAHC010143512023



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

Case No. : Bail Appln./2317/2023

ABUL HUSSAIN KHAN
S/O JAHAR ALI KHAN
R/O GOROIMARI
P.S. BONGAIGAON
DIST. BONGAIGAON, ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MS. S K NARGIS

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI

ORDER

Date : 08.11.2023

Heard Mr. H.R.A. Choudhury, learned Senior counsel assisted by Ms. S.K. Nargis, learned counsel for the petitioner. Also heard Mr. R.J. Baruah, learned Additional Public Prosecutor for the State.

2. This is an application filed under **Section 439 Cr.P.C.**, seeking bail by the

accused-petitioner, namely, **Abdul Hussain Khan**, in connection with **Special(NDPS) Case No. 161/2022 (arising out of Bazaricherra P.S. Case No. 201/2022)**, registered under **Section 20(b)(ii)(C)/25/29 of NDPS Act, pending before the learned Speicial Judge, Karimganj**

3 It has been submitted by the learned counsel for the accused/petitioner that the accused-petitioner has been languishing in judicial custody for almost one year. It is also submitted that nothing was recovered from the possession of the accused/petitioner. The petitioner is the registered owner of the vehicle and he has authorized the driver of the vehicle to drive the same. It is further submitted that the petitioner has no knowledge regarding transportation of suspected ganja in his vehicle. It is also submitted that another accused who is the driver of the alleged vehicle is absconding and summons were issued to him. Now, the case is fixed for production/appearance of the accused. Under such circumstances, how long the petitioner will be waiting for further proceeding of the case.

4. It is further submitted that the petitioner is no way connected with the instant case. At the time of seizure, the petitioner was at his home at Goraimari, Bongaigaon. As the petitioner has no knowledge about the transportation of alleged contraband and nowhere involved in the alleged incident and also considering the length of detention, the petitioner may be enlarged on bail.

5. In support of his submission, the learned counsel for the petitioner has placed reliance on the following case laws-

- (i) Balwinder Singh v. Asstt. Commr., Customs and Central Excise,

reported in (2005) v.4 SCC 146.

- (ii) Rabi Prakash v. The State of Odisha, reported in 2023 LiveLaw (SC) 533.

6. On the other hand, Mr. Baruah, learned Additional Public Prosecutor for the State has submitted that about 410 kg ganja was recovered from the alleged vehicle and the petitioner is the owner of the said vehicle. It is also submitted that the petitioner is very much involved in the alleged offence. Under such circumstances, the prayer of the petitioner may not be considered at this stage.

7. I have considered the submissions made by the learned counsel for the parties.

8. The NDPS Act is a special Act with an inbuilt mechanism in the form of Section 37 relating to bail. As the commercial quantity of ganja was kept secretly in the inbuilt carrier/pocket which transpires that it was built for the purpose of carrying ganja/contraband. However, it also appears that commercial quantity of ganja was kept concealed in the truck. It is an admitted fact that the petitioner is the owner of the said vehicle and the suspected ganja was recovered in the secret chamber of the vehicle which is not possible for the driver of the vehicle to make such secret chamber without consent of the petitioner i.e. owner of the vehicle.

9. In view of the observation made by the Hon'ble Supreme Court in the case of ***Chandrakeshwar Prasad Vs. State of Bihar***, reported in **(2016) 9 SCC 443**, the Hon'ble Supreme Court has laid down in clear terms that interest of

the society is a relevant factor to be taken into account while considering the prayer for bail. For ready reference, the relevant paragraphs of the said case are extracted herein below:

"10. This Court in Rajesh Ranjan Yadav @ Pappu Yadav v. CBI through its Director (2007) 1 SCC 70 balanced the fundamental right to individual liberty with the interest of the society in the following terms in paragraph 16 thereof:

"We are of the opinion that while it is true that Article 21 is of great importance because it enshrines the fundamental right to individual liberty, but at the same time a balance has to be struck between the right to individual liberty and the interest of society. No right can be absolute, and reasonable restrictions can be placed on them. While it is true that one of the considerations in deciding whether to grant bail to an accused or not is whether he has been in jail for a long time, the court has also to take into consideration other facts and circumstances, such as the interest of the society."

10. On consideration of the matter in its entirety, this Court is of the view that this is not a fit case for grant of bail to the accused/petitioner, at this stage. Therefore, prayer for bail is **rejected**.

11. The bail application stands disposed of.

JUDGE

Comparing Assistant