

GAHC010239632022



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

Case No. : I.A.(Crl.)/770/2022

NITUL BASUMATARY
S/O HANESHWAR BASUMATARY
VILL.- NO. 3 DHANSIRIKHUTI (BOGRIBARI)
P.S.- MAZBAT
DIST.- UDALGURI.

VERSUS

THE STATE OF ASSAM AND ANR.
REP. BY LD. P.P.
ASSAM.

2:MINTU HANDIQUE
S/O LATE NAREN HANDIQUE

S.I OF MAZBAT PS
UDALGURI
ASSAM.

Advocate for : MR. A BHATTACHARYA
Advocate for : PP
ASSAM appearing for THE STATE OF ASSAM AND ANR.

BEFORE
HONOURABLE MR. JUSTICE AJIT BORTHAKUR
HONOURABLE MRS. JUSTICE MALASRI NANDI

ORDER

27.01.2023

(Ajit Borthakur, J)

Heard Mr. A. Bhattacharya, learned counsel for the accused applicant as

well as Ms. S. Jahan, learned Addl. P.P., Assam appearing for the State respondent No. 1.

2. By this interlocutory application under Section 389 (1) Cr.P.C., the accused appellant, who is convicted vide the impugned Judgment and Order, dated 30.09.2022, passed in Special (NDPS) Case No. 10/2021 by the learned Special Judge (NDPS Act), Udalguri and sentenced to undergo R.I. for 15 (fifteen) years with fine of Rs.1,00,000/- (Rupees One Lakh), in default, to undergo S.I. for another 6 (six) months u/s 20(b)(ii)(c) of the NDPS Act, has prayed for suspension of sentence and to allow him to go on bail.

3. LCR is received in connection with Criminal Appeal No. 322/2022.

4. The respondent/State has filed objection.

5. The prosecution case, in a nutshell, is that an F.I.R., dated 23.09.2020, was lodged by SI Mintu Handique of Mazbat P.S. alleging, *inter-alia*, that on that day at about 6 a.m., on the basis of secret information the police party headed by the informant police officer intercepted a vehicle bearing Registration No. AS-01AQ-1036 (i10) at Bahadur Adarsha Gaon under Mazbat P.S. During search of the vehicle total 25 packets of suspected ganja (cannabis) covered with polythene weighing 130.295 KG. were recovered and the present accused applicant, who was driving the vehicle was apprehended. During investigation, the informant came to know that the accused applicant had been transporting the aforesaid quantity of seized suspected ganja to various places of Assam for his wrongful gain and there were possibilities of involvement of more persons with the case. On the basis of the said FIR Mazbat P.S. Case No. 78/2020 u/s 20(b)(ii)(c) of the NDPS Act was registered.

6. Mr. A. Bhattacharya, learned counsel for the accused applicant, submits

that the applicant has been continuously in judicial custody for 856 days since he was arrested on 23.09.2020. Mr. Bhattacharya further submits that due to erroneous appreciation of evidence on record, the applicant has been convicted of the charges and severely sentenced despite being absolutely innocent. Referring to the evidence of P.W. 7, the informant police officer, Mr. Bhattacharya submits that his evidence is highly doubtful in view of the fact that he is not corroborated by the remaining prosecution witnesses in material particulars and more particularly, for noncompliance of Sections 42, 50 and 52(A)(2) and further, misapplication of Section 54 of the NDPS Act. Mr. Bhattacharya has relied on the judgment rendered by the Hon'ble Supreme Court of India in *Sanjeet Kumar Singh @Munna Kumar Singh Vs. State of Chhattisgarh*, reported in *2022 LiveLaw (SC) 724*.

7. Referring to the objection filed by the prosecution side, Ms. S. Jahan, learned Addl. Public Prosecutor, submits that the contraband ganja weighing 130.95 KG was recovered and seized from an i-10 vehicle driven by the accused applicant by the police of Mazbat P.S. Ms. Jahan further submits that when the police signalled him to stop his vehicle, he attempted to run away to avoid apprehension by police leaving behind the vehicle he drove, but after a chase he was apprehended and thereafter, receiving the written authority provided by the Addl. S.P., the authorized police officer followed the procedure prescribed for seizure of the contraband. The seized substance was duly examined by the FSL and reported that the sample of the contraband gave positive tests for cannabis. Ms. Jahan submits that the evidence of the seizure witnesses P.Ws No. 1, 2 and 3 along with the evidence of the informant police officer, P.W. 7 and the FSL expert (P.W. 9) clearly reveal that the contraband ganja of commercial quantity was recovered and seized out of

the exclusive and conscious possession of the accused applicant and therefore, as the matter is now ready for final hearing on merits, the accused applicant may not be given the liberty of bail.

8. We have considered the above submissions made by the learned counsel of both sides and perused records including the impugned judgment and order as well as the judgment cited by the learned counsel for the accused applicant.

9. On scrutiny of the evidence of P.Ws 1 and 2, the seizure witnesses, it is prima facie revealed that 130.295 KG of suspected ganja was recovered and seized from an i-10 car and it was weighed by the weighing machine provided by P.W. 3. P. W. 4, who formed the police team headed by P.W. 7, the informant police officer has corroborated the evidence of P.W. 7 as regards the recovery and seizure of the contraband from the possession of the accused applicant as well as the process undertaken for seizure and forwarding of seized substance to the FSL for chemical analysis. P.W. 9, the Scientific Officer, D & N Division, FSL, Assam, who examined the aforesaid sample found positive tests for cannabis (ganja). P.W. 8, Police Officer, completed the remaining part of investigation and submitted charge-sheet in the case on having found prima facie material against the applicant accused. Thus, on marshalling through the evidence available on record, we do not prima facie see any reason to disbelieve the prosecution story of the case, subject, however, to a detailed hearing on merits of the appeal and scrutiny of the evidence on record including the technical grounds referred to above raised by the defence.

10. Having heard the learned counsel for both sides and consideration of the prima facie material on record, we are of the opinion that as there is no

indication of criminal antecedent of the accused applicant, who is a permanent resident of Udalguri district, Assam in dealing in trafficking of drugs and considering the prolonged detention for 856 days in judicial custody and further, as the disposal of the connected appeal will take some more time after preparing the Paper Book, it is provided that the sentence passed against the accused applicant in the above noted case shall remain suspended till disposal of the connected Criminal Appeal No.322/2022 and in the meantime, the accused applicant is directed to be released on bail of **Rs.1,00,000/- (Rupees One Lakh)** with **two sureties** of like amount to the satisfaction of the **learned Special Judge (NDPS Act), Udalguri.**

With the above directions, the Interlocutory Application stands disposed of.

JUDGE

JUDGE

Anupam

Comparing Assistant