

GAHC010250612022



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

Case No. : Bail Appln./3371/2022

IBRAHIM ALI
S/O JAHANUDDIN
R/O VILL- SUAPATA PART-IV,
P.S. BILASIPARA, DIST. DHUBRI, ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. M A ISLAM

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN

ORDER

Date : 09-01-2023

Heard Mr. M A. Islam, learned counsel for the applicant and also heard Mr. R.J. Baruah, learned Addl. PP, appearing for the State respondent.

2. This application under Section 439 Cr.P.C., is preferred by accused ***Ibrahim Ali***, who has been languishing in jail hajot in connection with ***Special (NDPS Act) Case No.26/2021***, under section ***22(C)*** NDPS Act, corresponding to ***Chapar PS Case No.323/2021***, pending in the Court of learned Special Judge, Bilasipara, since 09.07.2021, for grant of bail.

3. The above mentioned case has been registered on the basis of an FIR lodged by SI Chitta Ranjan Purkayastha of Chapar PS, on 06.07.2021, to the effect that, on that day at about 9.40 AM, acting on a tip off, he along with his staff intercepted one vehicle bearing registration No.AS 01 MC 9398 and recovered 7920 bottles of cough syrup, being carried therein illegally and concealed under the Mango Cartoon, and accordingly, seized the same in presence of witnesses, preparing seizure list. Thereafter, on the basis of his information, the investigating agency has apprehended one Kalam Ali and the present accused Ibrahim Ai and forwarded them to court.

4. Mr. Islam, learned counsel for the accused submits that the accused was arrested on 09.07.2021 and since then, he has been languishing in jail hajot for the last 543 days and that after completion of investigation, the IO has laid charge sheet against the accused Safiquel Islam and Kalam Ali, along with two other co accused to stand trial in the court under section 22(C) NDPS Act, and under section 120(B) IPC against the accused Ibrahim Ali. Further, Mr. Islam, submits that the learned court below has framed charge against the accused persons and examined as many as 4 (four) witnesses and

none of the prosecution witnesses have implicated the accused with the offence alleged in the FIR and nothing has been recovered from his possession also that the rigors of section 37 of the NDPS is not attracted herein this case against the present accused, and therefore, it is contended to enlarge the accused on bail.

5. Mr. Islam also referred to one case law of the Hon'ble Supreme Court in ***Sujit Tiwari Vs. Stat of Gujrat and Another*** reported in ***(2020) 13 SCC 477***, ***Basanta Saikia Vs. State of Assam*** reported in ***(2020) 34 GLT 239*** and ***Rajesh Santi Lal Bhagani Vs. Intelligence Officer NCB and Another***, reported in ***(1990) Criminal Law Journal 903***, in support of his statement.

6. On the other hand, Mr. R.J. Baruah, learned Addl. PP submits that the accused has been charged under section 22(C) NDPS Act read with section 120(B) IPC, and out of six witnesses cited in the charge sheet, three have already been examined by the learned court below and another three witnesses are yet to be examined and the offences are serious in nature and the rigors of section 37 NDPS Act is required to be satisfied by the accused, and the accused has failed to satisfy the same and therefore, it is contended to dismiss the petition.

6. Having heard the submission of learned Advocates for both the sides, I have carefully gone through the petition and the documents placed on record and also perused the case record with the assistance of Mr. Baruah, learned Addl. PP, and I find sufficient force in the submission of Mr. Islam, learned counsel for the accused and also I

find that the ratio laid down in the case laws, i.e. ***Sujit Tiwari (supra)***, ***Basanta Saikia (supra)*** and ***Rajesh Santi Lal Bhagani (supra)*** referred by him lends support to his submissions, wherein bail was granted to the accused persons due absence of/insufficiency of incriminating circumstances against them.

7. It appears that after investigation, the IO has submitted charge sheet against the present accused along with two other co accused, namely, Saiful Islam and Kamal Ali to stand trial under section 22(C) NDPS Act and under section 120(B) IPC against accused Ibrahim Ali. Further it appears that the learned court below has already examined 4 prosecution witnesses, out of six witnesses cited in the charge sheet. Further, it appears from the seizure list that the contraband substance was recovered from one Truck bearing registration No. AS 01 MC 9998, which was driven by accused Saiful Islam and the same was seized on 06.07.2021, and the present accused was apprehended on 08.07.2021, along with Kalam Ali from another truck, where Kalam Ali was fleeing away. Admittedly, nothing was seized from the possession of accused Ibrahim Ali. There is also nothing on the record to show that the accused Ibrahim Ali was aware of carrying contraband substance in his Truck on the relevant day.

8. As per the statement of the accused Saiful Islam, under section 67 of the NDPS Act, the owner of the Truck is Kalam Ali, from where the contraband substance was recovered. But, he has not whispered any word against accused Ibrahim Ali with the offence charged. And as per the statement of the accused Kalam Ali, recorded under section 67

NDPS Act, he is the owner of the Truck and he was aware of carrying cough syrup in his vehicle and he received a sum of Rs.2,00,000/- for the same. He was apprehended by police while he was fleeing away along with Ibrahim Ali in the vehicle bearing registration No. AS19 C 9934, at Chagolia Gate. And as per the statement of the accused Ibrahim Ali under section 67 NDPS Act, it appears that he and Kamal Ali was apprehended while Kamal Ali was fleeing away in the vehicle.

9. I have also carefully gone through the evidence of the four witnesses examined by the IO. In view of the evidence so brought on record, and also in view of the materials available on the record, specially the voluntary statement of the accused persons under section 67 of the NDPS Act, and without making any comment on the merit of the evidence and material on record, this court is of the view that a case for granting bail to the accused Ibrahim Ali is made out and that the rigors of section 37 NDPS Act would not come into play in his case as his case is different from the rest of the two accused.

10. Accordingly, it is provided that on furnishing a bond of Rs.1,00,000/- with one surety of the like amount to the satisfaction of the learned Special Judge, NDPS Act, Bilasipara/learned Special Judge, NDPS Act, Dhubri, the accused be enlarged on bail.

11. In terms of the above, the bail application stands disposed of. It is being clarified that the observation made herein above, is only for the purpose of disposing of this bail application, and not on merit of the case.

JUDGE

Comparing Assistant