

GAHC010251982022



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

Case No. : Bail Appln./3531/2022

SWAPAN KUMAR SINGHA .
S/O BINOD SINGHA
R/O CHANDRAPUR PART-II,
P.O. PALLARBOND
P.S. LAKHIPUR
DIST. CACHAR, ASSAM
PIN-788101

VERSUS

THE NARCOTIC CONTROL BUREAU
REP. BY THE STANDING COUNSEL, NCB.

Advocate for the Petitioner : MR U S BORGOHAIN

Advocate for the Respondent : SC, NCB

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

ORDER

Date : 16-02-2023

Heard Mr. U.S. Borgohain, learned counsel for the petitioner as well as
Mr. S.C. Keyal, learned standing counsel for the NCB.

2. The petitioner, namely, Swapan Kumar Singha, who was arrested on 08.09.2019 in connection with NDPS P.S. case no.21/2020 under section 8(c) and punishable under section 21(c) and 29 of the NDPS Act, is seeking regular bail by filing this application under section 439 Cr.P.C.

3. The learned counsel for the petitioner has submitted that the petitioner is not a regular driver of the vehicle which was intercepted and from which 3.540 kgs of Morphine was recovered and seized. Hence, it is submitted that being a temporary driver of the vehicle, the petitioner was not aware that any contraband morphine was concealed in the mudguard of the right side rear wheel of the vehicle in special cavity.

4. It is also submitted that the petitioner cannot be convicted on the basis of his alleged statement and as such statement is not admissible under section 67 of the NDPS Act, it is also submitted that the petitioner is not in conscious possession of the contraband Morphine and therefore he is entitled to bail. Considering the fact that the petitioner has been in custody for last three years and there is no scope of an early trial of the case.

5. The learned standing counsel for the respondent has referred to the materials available in the case diary against the petitioner and has opposed the prayer for bail.

6. On a perusal of the case diary, it appears that on specific information from reliable source, that huge quantity of contraband Morphine was being transported through vehicle no.AS-01DY-7936 which was intercepted and two

persons including the petitioner were in the vehicle which was being driven by the petitioner and on conducting search and seizure, the petitioner was called upon to break open the special cavity where drugs were concealed and when the said special cavity was opened/broken by the petitioner, the contraband was found stored in 14 transparent plastic packets.

7. Although the submission made by the learned counsel for the petitioner appears to be attractive at first blush that the petitioner was not in conscious possession of the narcotic drugs, but when the vehicle was intercepted, the petitioner was driving the car and he was one of the two occupants of the said car, therefore, whether the petitioner is in conscious possession or not of the contraband, the same would be a matter of evidence and not material for consideration on the prayer for bail.

8. Accordingly, as the petitioner was caught red-handed while transporting narcotic drugs, the Court is unable to record its satisfaction that there are reasonable grounds for believing that he is not guilty of the offence and that he is not likely to commit any offence while on bail, which is the requirement of section 37 of the NDPS Act.

9. Accordingly, the prayer for bail is rejected.

10. The Court Master shall return the photocopy of the case diary produced by the learned standing counsel for the NCB.

11. Application stands disposed of.

12. The Registry shall not issue certified/ uncertified copy of scanned copy of the case record.

JUDGE

Comparing Assistant