

GAHC010257182022



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

Case No. : Bail Appln./3464/2022

SAHIL SHARMA AND ANR
S/O JAGDISH SHARMA
R/O SIORA TANDA, P.O. AKHNOOR
P.S. GANDHARWAN
DIST. JAMMU, JAMMU AND KASHMIR.

2: SHRI AKSHAY KUMAR
S/O SHRI GORI LAL
R/O BOLYAN
BAJJA
P.O. AND P.S. BOLIAN
DIST. DODA
JAMMU AND KASHMIR

VERSUS

UNION OF INDIA
TO BE REP. BY THE DEPARTMENT OF CUSTOMS.

Advocate for the Petitioner : MR. A AHMED

Advocate for the Respondent : SC, CUSTOMS

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

ORDER

Date : 16-02-2023

Heard Mr. A. Ahmed, learned counsel for the petitioners as well as Mr.

S.C. Keyal, learned standing counsel for the Customs.

2. The petitioners, namely, (1) Sahil Sharma and (2) Shri Akshay Kumar, who was arrested on 19.05.2022 in connection with Departmental case no.01/CL/NDPS/AS/KXJ/2022-2 under sections 20(b)(ii)(c) and 29 of the NDPS Act corresponding to Special (NDPS) P.S. case no.79/2022, is seeking regular bail by filing this application under section 439 Cr.P.C.

3. The learned counsel for the petitioners has extensively referred to the contents of the FIR, seizure list and final complaint and final investigation report submitted in this case and it is submitted that the petitioner is sought to be implicated of the offence of transporting gross amount of 533.635 kgs of ganja (cannabis) where the truck bearing registration no.JK-02-CV-6137 merely because the petitioners are respectively the driver and handyman of the respective vehicle. It is submitted that in the final complaint report it has been specifically mentioned that the 560 packets of natural rubber was loaded in the truck under the supervision of one of the partner of M/s. Apex Rubber as well as the incharge of Jammu-Tripura Road line, who are named therein. It is submitted that at the relevant point of time the petitioners were preparing their food and were not aware of the items which were loaded in their truck as the truck was being loaded by a logistics firm engaged in transportation of goods. Hence, it is submitted that the petitioners were not in conscious possession of the contraband.

4. It is also submitted that as per the final complaint report, the contraband was kept concealed between the rubber packets loaded in the truck

and it is submitted that it is impossible for the petitioners to unload the consignment of rubber and then store contraband in its midst.

5. It is submitted that although the final complaint report clearly indicates the names of two persons who had supervised the loading of the truck but none of them were joined as co-accused. It is further submitted that in the present case in hand, the contraband was kept concealed among the consignment of natural rubber loaded in the truck.

6. It is submitted that being a driver of the vehicle, the petitioners were merely discharging their duty by plying the vehicle from one point to another. It is also submitted that in a similar circumstances, the Coordinate Bench of this Court by order dated 27.05.2022 passed in BA 965/2022, took note of the fact that the accused herein was a driver of the truck, had ordered release of the said accused on bail. Moreover, in support of his contention, the learned counsel for the petitioners has also relied on the case of *Kishore Bira Vs. State of Odisha*, MANU/OR/0433/2022, wherein reference is also made to the case of *Avtar Singh and ors. Vs. State of Punjab*, (2002) 7 SCC 419.

7. The learned standing counsel for the Customs has referred to the scanned copy of the case records and case diary received from the learned trial Court and has opposed the prayer for bail.

8. On a perusal of the case diary, it appears that on the basis of the specific information that contraband ganja was being transported by the truck of

the petitioner, the said truck was intercepted on 18.05.2022 which was being driven by the petitioner no.1 and that the petitioner no.2 was also accompanying the said truck as its handyman.

9. Upon search, 533.635 kgs (gross) and 530.135 kgs (net) ganja/ cannabis was seized. Under such circumstances, whether the petitioners were or not in conscious possession of the contraband would be a subject matter of the trial and in the considered opinion of the Court, that would not be a material for consideration of the prayer for bail.

10. On facts the order dated 27.05.2022 passed by the Coordinate Bench of this Court in BA 965/2022 is distinguishable because in the said case the seized cough syrup contained 600 grams of codeine phosphate which is apparently less than the commercial quantity. Moreover, the packets/ cartons seized by the investigating agency bore the seal and pack of the logistic company and it was loaded for transportation by the company truck which was driven by the accused for delivery.

11. The said facts are not similar with the present case in hand. Therefore, in light of the distinguishing facts of the said case, the Coordinate Bench of this Court having found that the seized contraband was not of commercial quantity, had recorded its satisfaction that rigours of section 37 of the NDPS Act are not attracted in the said case. This factor is also absent in the present case in hand. In so far as the cited case of *Kishore Bira (supra)* is concerned, the contraband was not seized out of exclusive possession of the accused and the accused was a daily wage labourer and on the date of occurrence the said accused was hired

as a labourer for loading and unloading of the bags and therefore the High Court of Odisha had held that the said accused was ignorant about the materials in the bag. When there was desertion by an owner of a cargo in a vehicle does not entitle the driver of possession of such cargo. In the present case it is noted that a logistic company had loaded 560 packets of natural rubber and it is not in dispute that apart from 560 packets of natural rubber, additional 35 packets containing dried cannabis were also seized from the truck, kept concealed amongst packets of natural rubber. Therefore, in the considered opinion of this Court as the petitioners were the driver and handyman of the vehicle wherein possession of additional stock which contained the contraband narcotic substance, the decision in the case of *Kishore Bira (supra)* does not help the petitioners in any way.

12. In the present case, as the petitioner no.1 and no.2 were the driver and handyman respectively of the vehicle which was intercepted and commercial quantity of contraband was seized. Under such circumstances, the Court is unable to record its satisfaction that there are reasonable grounds for believing that they are not guilty of the offence and that they are not likely to commit any offence while on bail, which is the requirement of section 37 of the NDPS Act.

13. Accordingly, the prayer for bail is rejected.

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

15. Application stands disposed of.
16. The Registry shall not issue certified/ uncertified copy of scanned copy of the case record.

JUDGE

Comparing Assistant