

GAHC010261492022



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

Case No. : Bail Appln./3546/2022

VIKASH BISHNOI @ VICKY
S/O SRI POONA RAM SISHNOI @ POONA RAM,
R/O HANIYA KHINDAKORE, PO.S. OSIAN, DIST. JODHUR, RAJASTHAN.

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. K BORUAH

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN
ORDER

18.01.2023

Heard Mr. K. Barua, learned counsel for the accused and Ms. S.H. Bora, learned Addl. P.P. for the State respondent.

2. This application under Section 439 of the Code of Criminal Procedure, 1973, is preferred by accused, namely, Sri Vikash Bishnoi @ Vicky, who has

been languishing in jail hazot since 20.07.2021, in connection with the NDPS Case No. 79/2021 [corresponding to GR Case No. 309/2021, Manja PS Case No. 34/2021], under Sections 15[c]/25/27[A]/29 of the NDPS Act, for granting bail.

3. The said case has been registered on the basis of an FIR lodged by SI Jitu Moni Deka, on 26.06.2021, to the effect that acting on a tip off they have apprehended one Truck, bearing registration No. RJ-19-GB-9825, at about 8.20 am, at Manja near ICDP and recovered 2507.5 kg of dry opium pod and seized the same preparing seizure list and also apprehended one Kishana Ram and Chandra Prakash, driver and co-driver of the said vehicle and on the basis of their statement they have apprehended Md. Saiful Islam and also conducted search in his house at Chumukidima Nadi Par, under Dimapur district and recovered 308 kg of dry opium pod from his house. The allegation against the present accused is that he has deployed accused Kishana Ram and Chandra Prakash to carry dry opium pod.

4. Mr. Barua, learned counsel for the accused submits that the accused has been languishing in jail hazot for last 557 days and he is innocent arrested as mistaken identity and his father name is different from that of the movement order dated 18.07.2021 issued by the SP of Karbi Anglong from Rajasthan and nothing was recovered from the possession of the accused and except the statement of the co-accused there is no other materials to show his complicity with the offence alleged in the FIR, and therefore, it is contended to allow this petition.

5. On the other hand Ms. Bora, learned Addl. P.P. has opposed the petition and submits that there are sufficient incriminating materials to show his

complicity with the offence alleged in the FIR, and he is the person wanted here in this case and is identified by arrested co-accused, and therefore, it is contended to dismiss the petition.

6. Having heard the submission of learned counsel for both the parties I have carefully gone through the petition and the documents placed on record and also perused the scanned copy of the received from the learned court below.

7. It appears that the issue of mistaken identity of the accused was raised before the learned court below and the learned court below, vide order dated 15.10.2021, has elaborately dealt with the same and held that the present accused is the person who is wanted here in this and therefore, the learned court below has dismissed the prayer.

8. In view of finding so recorded by the learned court below, I find just ground to take a different view from that of the learned court below.

9. Indisputably nothing has been recovered from the possession of the present accused. But, from the statement of the co-accused and the call data records and the other facts and circumstances on the record shows the complicity of the accused with the offence alleged in the FIR. And admittedly, the quantity of contraband substance recovered from the possession of the accused is of commercial quantity and the accused has to satisfy the rigors of section 37 of the NDPS Act. From the scanned copy of the record of the learned court below and also from the submission of learned counsel for the accused and the documents placed on record, this court is unable to desire its

satisfaction that there exists any reasonable ground to show that the accused is not guilty of the offence and that he is unlikely to commit such offence while on bail. Therefore, this court is inclined to dismiss the petition. Accordingly, this BA stands dismissed. However, the learned court below is directed to expedite the trial and if necessary recourse has to be taken to section 309[1] of the Cr.P.C. It is also being clarified that the observation made herein above is only for the purpose of disposing this bail application, not on merit of this case.

JUDGE

Comparing Assistant