

GAHC040007802024



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

Case No. : BA/62/2024

Tsering Gombu
Son of Norbu Songmu, resident of Waizer Village, PO and PS Kalaktang, West
Kameng District, Arunachal Pradesh

VERSUS

The State of AP
represented by the PP of AP

Advocate for the Petitioner : Subrata Chowdhury

Advocate for the Respondent : P P of AP

BEFORE
HONBLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

Date : 29.08.2024

1. Heard Mr. H. Takum, learned counsel for the petitioner. Also heard Mr. T. Ete, learned Additional Public Prosecutor for the State.

2. This application under Section 439 of the Code of Criminal Procedure, 1973 has been filed by the petitioner, namely, Tsering *Gombu*, who has been detained behind the bars since 13.03.2024 (more than 162 days) in connection with Kalaktang P.S. Case No.4/2024 under section 20(b)(ii)C/25 of

the NDPS Act, 1985.

3. The gist of accusation in this case against the present petitioner is that on 13.03.2024, one Padi Payang had lodged an FIR before the Officer-in-Charge of Kalaktang Police Station, *inter alia*, alleging that on 12.03.2024, on receipt of information through local sources that one Tsering Gombu (the present petitioner) is dealing with the business of cannabis and he had stocked huge quantity of cannabis, a search team was constituted and a raid was conducted in the house of the petitioner. During search operation, 245.1 KG of suspected cannabis (Ganja) was found in 11 plastic bags from the premises of his house.

4. The learned counsel for the petitioner has submitted that the petitioner is not involved in the offence alleged in the FIR. He submits that the contraband was seized in this case from a house which was abundant by the petitioner about 15 years ago. He also submits that the seizing authorities have also committed procedural irregularities in as much as, though the seizure was made on 13.03.2024, however, the seizure witnesses have signed on the seizure memo on 14.03.2024.

5. On the other hand, Mr. T. Ete, learned Additional Public Prosecutor has vehemently opposed the grant of bail to the petitioner. He has also produced the case diary of Kalaktang P.S. Case No.4/2024 and has submitted that the quantity of Ganja seized in this case is huge quantity i.e., 245.1 KG which is commercial quantity and, therefore, the embargo of Section 37 of NDPS Act, 1985 is applicable to this case and as there are incriminating materials in this case against the petitioner, he opposes the grant of bail.

6. I have considered the submissions made by the learned counsel for

the petitioner as well as the learned Additional Public Prosecutor for the State and gone through the case diary of Kalaktang P.S. Case No.4/2024.

7. There is no dispute that the quantity of contraband seized in this case is of commercial quantity, hence, apparently the embargo of Section 37 of the NDPS Act, 1985 is applicable in this case.

8. Though, the learned counsel for the petitioner has submitted that the contraband was seized from an abundant house of the petitioner which he had abundant 15 years ago, however, the materials in the case diary, available at this stage suggest that the contraband was seized from the possession of the petitioner.

9. Regarding procedural irregularities as alleged by the learned counsel for the petitioner, there is nothing on record at present to suggest procedural irregularities as alleged by the learned counsel for the petitioner.

10. As the instant case involves commercial quantity of contraband and as the provisions of Section 37 of the NDPS Act, 1985 is apparently applicable to this case, this Court is constrained to reject the bail of the present petitioner.

11. This bail application is hereby rejected.

JUDGE

Comparing Assistant