

GAHC010004762024



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

Case No. : Bail Appln./77/2024

TULEN HAZARIKA AND ANR
S/O LATE TANGKESWAR HAZARIKA
R/O BORDIRAK, NEAR GOHORAGORI
TINIALI, P.S. KAKOPATHAR, DIST. TINSUKIA, ASSAM

2: SRI TURANJIT SONOWAL
S/O LATE PUNAKON SONOWAL
R/O BORDIRAK
NEAR GOHORAGORI TINIALI
P.S. AKAKOPATHAR
DIST. TINSUKIA
ASSA

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. A K GUPTA

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN
ORDER

22.01.2024

Heard Mr. A.K. Gupta, learned counsel for the accused persons and
Mr. R.J. Barua, learned Additional Public Prosecutor for the State respondent.

2. This application under Section 439 of the Code of Criminal Procedure, 1973, is preferred by accused persons namely, **Sri Tulen Hazarika and Sri Turanjit Sonowal**, who have been languishing in jail hazot in connection with the **NDPS Case No. 18[T]/2023**, under Sections 21[c]/29 of the NDPS Act, pending before the learned Special Judge, Tinsukia, for granting bail.

3. The said case has been registered on the basis of an FIR lodged by SI Bongshi Timung, on 30.11.2022. The essence of allegations made in the FIR is that on 30.11.2022, at about 6:45 pm, they have apprehended three women namely, Smti Salma Begum; Smti Danmaya Chetry; and Smti Kumari Chetri, from parking area of Tinsukia Railway Junction, Hijuguri and recovered 312.69 grms of suspected heroin from them and during interrogation they reveals that the said consignment of contraband substance was supposed to be delivered to one Sri Tulen Hazarika @ Babu and Sri Turanjit Sonowal and on being laid and shown by Salma Begum they have found Sri Tulen Hazarika @ Babu and Sri Turanjit Sonowal in a KIA Seltos vehicle.

4. Mr. Gupta, learned counsel for the accused persons, has argued on following points:-

(i) That, the accused persons were arrested on 30.11.2022, and since then they have been languishing in jail hazot for last 402 days.

(ii) That, no contraband substances were recovered from their possessions.

(iii) That, they were arrested only on the basis of statement of the co-accused persons and also on the basis of statement made by the accused under section 67 of the NDPS Act and in view of the decision

of Hon'ble Supreme Court in **Tofan Singh vs. State of Tamil Nadu**, reported in **(2021) 4 SCC 1** the same are not admissible;

(iv) That, after completion of investigation the IO has submitted charge sheet and thereafter, the learned court below has framed charge against the accused persons under Sections 21[c]/29 of the NDPS Act and thereafter, the learned court below has examined 4 witnesses out of 11 cited witnesses in the charge sheet.

(v) That, the accused are ready to face trial and will appear before the learned court below regularly;

Under the aforementioned facts and circumstances Mr. Gupta contended to allow this petition.

5. On the other hand Mr. Barua, learned Additional Public Prosecutor submits that admittedly the quantity of contraband substance allegedly recovered from the possession of the co-accused are of commercial quantity and as such, the embargo under Section 37 of the NDPS Act will come into play and that there is nothing on the record, as to how the accused persons will satisfy the aforesaid requirement. Mr. Barua further submits that the trial is going on and as many as 4 witnesses have been examined by the learned court below, out of 11 cited witnesses in the charge sheet and therefore, it is contended to dismiss the petition.

6. However, to a pointed query of this Court, as to how the accused persons will satisfy the twin requirement of section 37 of the NDPS Act, then the learned counsel for the accused submits that nothing has been recovered from the possession of the accused persons and they have no antecedent of criminal activities.

7. Having heard the submission of learned counsel for both the parties, I have carefully gone through the petition as well as the documents placed on record and also perused the case diary with the assistance of learned Additional Public Prosecutor.

8. Indisputably, contraband substances were not recovered from the possession of the present two accused. The same were recovered from the possession of the other three co-accused persons. And as per statement of the co-accused the seized contraband substances were supposed to be delivered to accused, Tulen Hazarika. And thereafter, on being shown and identified by co-accused the present accused were apprehended from a car, being parked at the parking area of the Tinsukia Railway Station. One of the present accused, namely, Tulen Hazarika also in his statements under section 67 NDPS Act, stated the same. But, the said statements are inadmissible in view of the decision of Hon'ble Supreme Court in **Tofan Singh** (supra). Mr. Gupta, the learned counsel for the accused has rightly pointed this out during hearing.

9. Indisputably, the quantity of contraband substance recovered from the possession of the co-accused were of commercial quantity and as such, the embargo under Section 37 of the NDPS Act will definitely come into play. This court is conscious of the fact that the contraband substances were not recovered from the possession of present accused persons. But, this lack of possession does not absolve this court from the level of scrutiny requires under section 37 NDPS Act. Reference in this context can be made to a decision of Hon'ble Supreme Court in **Union of India through NCB, Lucknow vs. Nawaz Khan** reported in **(2021) 10 SCC 100**, where it has been held that absence of possession of contraband on the person of respondent by High Court in impugned order does not absolve it of level of scrutiny required under section

37(1) (b) (ii) of NDPS Act.

10. Here in this case, from the materials placed on record and also from the scanned copy of the record received from the learned court below as well as from the submission of the learned counsel for the accused this Court is unable to derive its satisfaction that the accused Tulen Hazarika is not guilty of the offence and that he will not commit similar offence while on bail.

11. Further, it appears that the offences are serious in nature and trial is going on and the learned court below has examined 4 witnesses out of 11 cited witnesses in the charge sheet and if the accused persons are enlarged on bail at this stage, it may cause delay in disposal of the case.

12. Having considered above and also considering the nature and gravity of the offence, this Court is of the view that this is not a fit case where the privilege of bail can be extended to the accused Tulen Hazarika.

13. Accordingly, the prayer in respect of accused Tulen Hazarika stands dismissed.

14. However, there is explanation as to how accused Turanjit Sonowal came to be travelled to Tinsukia along with Tulen Hazarika in the vehicle belonging to him [Turanjit] and he was not aware of the actual object of Tulen Hazarika in travelling his vehicle to Tinsukia Railway Station, who in fact came to receive contraband substance from the co-accused. In the given facts and circumstances, I find the case of accused Turanjit Sonowal stands on a different footing.

15. Having considered above and also having scrutinized the materials placed on record and further in view of the submission of Mr. Gupta, the learned counsel for the accused, this court is prima facie of the view that accused

Turanjit Sonowal has succeeded in satisfying the twin requirement of section 37 NDPS Act.

16. Accordingly, this court is inclined to extend the privilege of bail to the accused **Turanjit Sonowal**. It is provided that on furnishing a bond of Rs. 50,000/, with one surety of like amount to the satisfaction learned Special Judge (NDPA), Tinsukia, the accused **Turanjit Sonowal** be enlarged on bail. This privilege is however subject to the condition that he shall appear before the learned court below on each and every date.

17. The learned court below is also directed to make an endeavor to dispose of the case as expeditiously as possible and if necessary recourse to the provision of section 309(1) Cr.P.C, without being influenced by any of the observation made herein above as the same are made to dispose of this bail application, not on merit of the case.

Comparing Assistant

JUDGE