

GAHC010005132024



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

Case No. : Bail Appln./105/2024

ANIL PEGU
S/O SRI MUNTAN PEGU
R/O VILL- DHUNAGURI MISSING GAON,
P.S. BIHPURIA,
PIN-784161
DIST. LAKHIMPUR, ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MS D BORGOHAIN

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN
ORDER

01.02.2024

Heard Ms. D. Borgohain, learned counsel for the accused and also heard 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 namely, **Sri Anil Pegu**, who has been languishing in jail hazot in connection with the **Bihpuria P.S. Case No. 204/2023**, under Sections 20[c]/29 of the NDPS Act, for granting bail.

3. The said case has been registered on the basis of an FIR lodged by SI Gaurav KM Bhumij, on 22.11.2023. The essence of allegations made in the FIR is that acting on a tip off on 20.11.2023, at about 09.45 pm, they have apprehended accused Anil Pegu at Adhaguri No.1 Forest Camp of Pabha Forest Reserve and recovered 20.756 kg of Ganja from his possession and seized the same in presence of witnesses.

4. Ms. Borgohain, learned counsel for the accused has argued on following points:-

(i) That, the accused person was arrested on 21.11.2023, and since then he has been languishing in jail hazot for last 71 days.

(ii) That, while conducting search of the accused the mandatory provision of section 42 NDPS Act has not been complied with and this will vitiate the entire trial;

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

Under the aforementioned facts and circumstances, Ms. Borgohain has contended to allow this petition.

5. On the other hand, Mr. Baruah, 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 will satisfy the aforesaid requirement. Mr. Baruah further submits that compliance or non compliance of the

mandatory provision of section 42 NDPS Act has to be ascertained only during trial not at this stage, and that investigation is going on and if the accused is enlarged on bail at this stage then the investigation will suffer a setback. 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 as well as the documents placed on record and also perused the case diary with the assistance of learned Additional Public Prosecutor.

7. Indisputably, the quantity of contraband substance recovered from the possession of the accused are of commercial quantity and as such, the embargo under Section 37 of the NDPS Act will definitely come into play here in this case. But, from the materials placed on record and also from the case diary as well as from the submission of the learned counsel for the accused this Court is unable to derive its satisfaction that the accused Anil Pegu is not guilty of the offence and that he will not commit similar offence while on bail.

8. Though Ms. Borgohain, learned counsel for the accused submits that while conducting search of the accused, mandatory provision of section 42 NDPS Act has not been complied with yet this court is of the view that such a submission can be considered only at the time of trial not at this stage. Reference in this context can be made to a decision of Hon'ble Supreme Court in the case of **Baldev Singh vs. State of Punjab** reported in **(1999) 6 SCC 172**.

9. Further, it appears that the offences are serious in nature and investigation is going on and if the accused person is enlarged on bail at this stage, then the investigation will suffer a setback.

10. 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 Anil Pegu.

11. Accordingly, the petition stands dismissed. The case diary be sent back.

Comparing Assistant

JUDGE