

GAHC010019862024



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

Case No. : Bail Appln./279/2024

SHYAM SUNDAR PAREEK
S/O- REVANTMAL PAREEK, R/O VILL NOKHA WARD NO 13 PO AND PS
NOKHA DIST BIKANER RAJASTHAN 334803

VERSUS

THE STATE OF ASSAM ,REP BY THE PP ASSAM

Advocate for the Petitioner : MR J I MONDAL
Advocate for the Respondent : PP, ASSAM

BEFORE

HONOURABLE MR. JUSTICE ROBIN PHUKAN

ORDER

Date : 19-02-2024

Heard Mr. M. A. Islam, learned counsel for the accused. Also heard Mr. R. J. Baruah, learned Addl. P.P. for the State respondent.

This application, under Section 439 Cr.P.C. is preferred by accused, Shyam Sundar Pareek, who has been languishing in jail hajot since 22.1.2024, in connection with Bongaigaon GRPS Case No. 8/2024, under Sections 120 (B)/ 420/379/ 411 IPC, for grant of bail.

The above noted case has been registered on the basis of an FIR lodged by one ASI Bijoy Kr. Singh on 22.1.2024.

The essence of allegation, made in the FIR, dated 22.1.2024, is that on 21.1.2024, at about 5-55 P.M. while checking train No. 15658, Down Brahmaputra Mail at New Bongaigaon Railway station, they have found one person, namely, Shyam Sundar Pareek with 2 nos. of gold biscuits, weighing 166 gram in each biscuit.

Mr. Islam, learned counsel for the accused submits that the accused was arrested on 22.1.2024 and since then he is languishing in jail hajot for last 28 days. Further, Mr. Islam submits that though the case has been registered u/s 120 (B)/ 420/379/ 411 IPC, yet the same Sections are not attracted herein this case and at best, the case should have been handed over to the Customs Department and that the accused is ready to face trial and therefore, it is contended to allow the petition.

On the other hand, Mr. Barua, learned Addl. P.P. submits though he was directed to produce the case diary before this Court, vide order dated 30.1.2024 and 12.2.2024, yet he has not received the case diary.

It is also to be noted herein that in the order dated 12.2.2024, it has been observed that in the event of failing to produce the case diary today, the Court will proceed to hear and dispose of the matter without the case diary.

Since Mr. Barua, learned Addl. P.P. has failed to produce the case diary before this Court today also, this Court finds no option but to proceed to hear and dispose of the matter on the basis of the materials available on the record.

It appears that the accused was arrested on 22.1.2024 and since then he is languishing in jail hajot for last 28 days. The forwarding report dated 22.1.2024 indicates that the accused was suspected to be involved in smuggling of gold. Though the case has been registered u/s 379/ 411/420 IPC, from the perusal of the FIR and the forwarding report it becomes apparent that no such instruction has been received in respect of committing theft of the aforesaid gold Biscuits or in respect of receiving stolen property or in respect of cheating any person by the present accused. Having considered above, and also considering the period of detention and balancing the same with the nature and gravity of the offence, this Court is inclined to allow this

petition. It is provided that on furnishing a bond of Rs.50,000/- with one surety of like amount to the satisfaction of the learned Chief Judicial Magistrate, Bongaigaon, the accused be enlarged on bail.

JUDGE

Comparing Assistant