

GAHC010021892024



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

Case No. : Bail Appln./337/2024

PREMA PANDIT
S/O- LATE SANTOSH PANDIT, R/O- KUSHAL KUWAR PATH, NAGAON
ROAD, WARD NO.8, BALUHUNDAR, P.S. LANKA, DIST.- HOJAI, ASSAM

VERSUS

THE STATE OF ASSAM
REPRESENTED BY P.P., ASSAM

Advocate for the Petitioner : MR S M ABDULLAH P

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

04.04.2024

- 1.** Heard Mr. S. Munir, learned counsel for the petitioner. Also heard Mr. R.J. Baruah, learned Additional Public Prosecutor, Assam.
- 2.** This application under section 439 of the Code of Criminal Procedure, 1973 has been filed by the petitioner, namely, Sri Prema Pandit, who has been

detained behind the bars since 13.06.2023 in connection with NDPS Case No. 78/2023, under Section 20(b)(ii)(C) of the NDPS Act, 1985.

3. The accusation in this case against the present petitioner is that 85.19 Kg of ganja was seized from the possession of the present petitioner and FIR to that effect was laid on 12.06.2023 by one Dipen Ch. Baruah of Police, before the Officer-In-Charge of Borpathar P.S. On receipt of the said FIR Borpathar P.S. Case No. 30/2023 was registered and investigation was initiated.

4. After completion of the investigation, charge sheet was laid against the present petitioner under Section 20(b)(ii)(C) of the NDPS Act, 1985.

5. Learned counsel for the petitioner has submitted that in the FIR no allegation has been made against the present petitioner, and in the FIR the only mention has been made regarding recovery of the seized contraband from a bus. How and why the present petitioner was arrested in connection with the said recovery has not been specifically mentioned in the FIR.

6. Learned counsel for the petitioner has submitted that though the charges were framed on 16.12.2023 against the present petitioner, however, not even a single witness has been examined till date.

7. On the other hand, learned Additional Public Prosecutor has submitted that since the quantity of contraband seized from the possession of the present petitioner is of commercial quantity the embargo of Section 37 of the NDPS Act is applicable.

8. Learned Additional Public Prosecutor has also submitted that two witnesses in their 164 statement recorded during the course of the investigation have categorically stated that the seized contraband was seized from the possession of the present petitioner.

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

both the parties as well as perused the materials available on record, including the scanned copy of NDPS Case No. 78/2023. Though on perusal of the FIR, it appears that specific allegations were not made that the recovery of seized ganja was made from the present petitioner and only statement in the FIR is that after recovery of the ganja from the vehicle bearing Registration No. AS21-C-9426 which is a bus, the petitioner was arrested from the said bus.

10. However, during the course of the investigation, other materials were collected including the statement of witnesses recorded under Section 164 of the Code of Criminal Procedure, 1973, wherein, the witnesses have categorically implicated the present petitioner as and have stated that the seized ganja was recovered from his luggage belonging to the present petitioner.

11. In view of the facts, the submissions made by the learned counsel for the petitioner does not appear to be persuasive. As the contraband seized in this case is ganja, i.e. 85.19 Kg which is commercial quantity of ganja.

12. Hence, the embargo of Section 37 of the NDPS Act, 1985, is applicable and this court is of the considered opinion that the petitioner is unable to overcome this embargo.

13. Therefore, the prayer for bail is rejected at this stage.

JUDGE

Comparing Assistant