

GAHC010028872024



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

Case No. : Bail Appln./413/2024

SANTOSH KUMAR SINGH
S/O MOHAN PRASAD SINGH, RESIDENT OF VILLAGE KHERIYA, WARD NO.
13, PS KURSELA, DIST PATNA, BIHAR ,85410

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MS A MAJUMDER

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN
ORDER

11.03.2024

Heard Ms. K. Malakar, learned counsel for the accused and Mr. P.S. Lahkar, 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, **Santosh Kumar Singh**, who has been languishing in jail hazot in connection with the **Bongaigaon G.R.P.S. Case No. 142/2023**, under Sections 20(b)(ii)(C)/29 of the NDPS Act, for granting bail.

3. The said case has been registered on the basis of an FIR lodged by ASI Sanjib Choudhury, on 25.12.2023. The essence of allegations made in the FIR is that acting on a tip off, he along with his staff conducted search in Okha Dwarka Express, Train No. 15636 DN, at New Bongaigaon Junction and found two persons namely, Rahul Kumar Jha and Santosh Kumar Singh, with two bags containing 10.900 kg (approx) and 10.100 kg (approx) of suspected ganja, altogether 21 kg (approx) of suspected contraband substance recovered from their possession.

4. Ms. Malakar, learned counsel for the accused submits that the accused was arrested on 25.12.2023, and since then he has been languishing in jail hazot for last 77 days. Ms. Malakar further submits that the quantity of contraband substance allegedly recovered from the possession of the present accused is 10.100 kg, which is an intermediate quantity and as such, the embargo under Section 37 of the NDPS Act is not applicable here in this case. Ms. Malakar also submits that the accused is ready to co-operate with the investigating agency and therefore, it is contended to allow this petition. To strengthen her submission Ms. Malakar has referred one case law of Hon'ble Supreme Court, in the case of **Amarsingh Ramjibhai Barot vs. the State of Gujrat**, reported in **(2005) 7 SCC 550** and another case law of Hon'ble Kerala High Court, in the case of **Muthu Kumar vs. Station House Officer**, in **BA No. 1346/2008**.

5. On the other hand Mr. Barua, learned Additional Public Prosecutor by producing the case diary submits that the IO has collected sufficient incriminating materials against the accused. Mr. Barua further submits that though the contraband substance, allegedly recovered from the possession of the present accused, is an intermediate quantity, yet, if the contraband

substance recovered from the other co-accused is taken into account, then it becomes 21 kg, which is of commercial quantity and that both the accused persons were travelling in the same coach of Okha Dwarka Express and that there is material to show that there is conspiracy between them. Mr. Barua also submits that though Ms. Malakar has referred two case laws, yet, these cases would not be applicable in the present case, as Section 29 of the NDPS Act was not there 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. Admittedly, the contraband substance allegedly recovered from the possession of the present accused is 10.100 kg, which is an intermediate quantity. But, it appears that the present accused and the other co-accused were travelling together in the same coach and their destination was also the same. Further, it appears that the case was also registered under Section 29 of the NDPS Act, as there are materials to show hatching of conspiracy between the two accused persons and that being so, it cannot be said that the embargo of Section 37 of the NDPS Act will not be applicable here in this case. But, from the materials placed on record and also from the submission of learned counsel for the accused, this Court is unable to derive its satisfaction that the accused is not guilty of the offence and that he will not commit any offence while on bail.

8. Having considered above and also having considered the submissions of learned counsel for both the parties 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.

- 9.** Accordingly, this bail application stands dismissed.
- 10.** The case diary be returned.

Comparing Assistant

JUDGE