

GAHC010030952024



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

Case No. : Bail Appln./453/2024

MD. JAYAD KHAN
S/O MD. ABAS KHAN
R/O SANGAIYUMPHAM PT.II, CHERAPUR, CITY- SANAIYUMPHAM, P.O.
WANGJING,
P.S. THOUBAL, DIST. THOUBAL, STATE- MANIPUR-795148

VERSUS

NARCOTICS CONTROL BUREAU
REP BY THE SC, NCB

Advocate for the Petitioner : MR M A ISLAM, MR J I MONDAL

Advocate for the Respondent : SC, NCB,

BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI

ORDER

Date : 01.08.2024

Heard Mr. M.A. Islam, learned counsel for the accused-petitioner as well as Ms. M. Deka, learned counsel appears on behalf of Mr. S.C. Keyal, learned Standing counsel, NCB.

2. By this petition filed under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023, the petitioner, namely, **Md. Jayad Khan** has prayed for granting bail in connection with **NDPS Case No. 140/2024 (arising out of NCB Guwahati Crime No. 18/2023)** registered under Section **21(c)/29 of NDPS Act**, pending in the court of learned Additional Sessions Judge No. 2, Kamrup(M), Guwahati.

3. It is submitted that the petitioner has been languishing in judicial custody for last 276 days since his arrest on 30.10.2023. Though charge-sheet has been submitted, charge has not yet been framed. The petitioner is the driver of the vehicle and he has no knowledge regarding carrying of such contraband in the said vehicle. The owner of the vehicle is one Md. Farish and he is the co-accused in this case and he is responsible for such contraband item which was seized during inspection. The co-accused, as mentioned above, asked the petitioner to drive the vehicle and later on, NCB team intercepted the said car. Considering the length of detention and background of the case, bail may be granted to the petitioner.

4. On the other hand, Ms. Deka, learned counsel for NCB submits that the trial is not yet commenced. However, commercial quantity of heroine was found in the vehicle in which the petitioner was the driver. At this stage she has objected in granting bail to the petitioner as because charge has not yet been framed.

5. I have considered the submissions of learned counsel for the parties. I have also perused the trial court record.

6. It appears that commercial quantity of heroine was found in the vehicle which was driven by the petitioner at the relevant time of interception. It is also revealed that one Md. Farish who is the owner of the vehicle was also found along with the petitioner. It transpires that the petitioner has knowledge about carrying of such contraband item and the co-accused also paid money to the petitioner for transporting such illegal contraband. It also appears that the accused was arrested on 30.10.2023 and charge-sheet was submitted on 29.04.2024. It is submitted by the learned counsel, NCB that charge has not yet been framed as because there is no any engaged lawyer of the accused petitioner to represent them in the trial court.

7. The NDPS Act is a special Act with an inbuilt mechanism in the form of Section 37 relating to bail. The commercial quantity of heroine was kept secretly in a vehicle in which the petitioner was the driver.

8. The Hon'ble Supreme Court in the case of ***Chandrakeshwar Prasad Vs. State of Bihar***, reported in ***(2016) 9 SCC 443***, has laid down in clear terms that interest of the society is a relevant factor to be taken into account while considering the prayer for bail. For ready reference, the relevant paragraphs of the said case are extracted herein below:

"10. This Court in Rajesh Ranjan Yadav @ Pappu Yadav v. CBI through its Director (2007) 1 SCC 70 balanced the fundamental right to individual liberty with the interest of the society in the following terms in paragraph 16 thereof:

"We are of the opinion that while it is true that Article 21 is of great importance because it enshrines the fundamental right to individual liberty, but at the same time a balance has to be struck between the right to individual liberty and the interest of society. No right can be absolute, and reasonable restrictions can be placed on them. While it is true that one of the considerations in deciding whether to grant bail to an accused or not is whether he has been in jail for a long time, the court has also to take into consideration other facts and circumstances, such as the interest of the society."

9. On consideration of the matter in its entirety, this Court is not inclined to grant of bail to the accused/petitioner, at this stage. Therefore, prayer for bail is **rejected**. However, trial court is directed to appoint one legal aid counsel in absence of any counsel representing the accused petitioner and the other co-accused who were in jail in connection with this case and proceed with the case in accordance with law.

10. The bail application stands disposed of.

JUDGE

Comparing Assistant