

GAHC010053822024



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

Case No. : Bail Appln./754/2024

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

10.04.2024

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 **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. It is to be noted here that **Bihpuria P.S. Case No. 204/2023**, 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 submits that this is the second bail application and the first one being BA No. 105 of 2024 was dismissed by this court after perusing the case diary vide order dated 01.02.2024. Ms. Borgohain further submits that the accused was arrested on 21.11.2023, and since then he has been languishing in jail hazoot for last 141 days. It is the further submission of Ms. Gohain that while conducting search and seizure the mandatory provision of section 42/52-A of NDPS Act has not been complied with and this will vitiate the entire trial and this can be taken into account even at the stage of bail also. Further she submits that the accused is ready to face trial and will appear before the learned court below regularly and therefore she has contended to allow this petition.

5. Whereas, Mr. Baruah, learned Additional Public Prosecutor submits that after rejection of the first application no change of circumstance has taken place so as to maintain this second application. Further Mr. Baruah submits that the quantity of contraband substance allegedly recovered herein this case is 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 the contention regarding compliance or non compliance of the mandatory provision of section 42 NDPS Act has already been adjudicated by this court in

the earlier bail application 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. It is well settled by Hon'ble Supreme Court in catena of decisions that subsequent bail application is maintainable only when there is change of circumstance in favour of the accused. Reference in this context can be made to a decision in **State of T.N. vs. S.A. Raja** reported in **(2005) 8 SCC 380**. Here in this case, admittedly, and except the length of detention, no change of circumstances has taken place in favour of the accused and Mr. Baruah, the learned Addl. P.P. has rightly pointed this out at the time of hearing. And in the case of **NCB vs. Mohit Agarwal**, reported in **[2022] 0 Supreme (SC) 619**, a three Judges Bench of Hon'ble Supreme Court has held that the length of period of his custody or the fact that the charge sheet has been filed and the trial has commenced are by themselves not consideration that can be treated as persuasive ground for granting relief to the accused under section 37 of the NDPS Act. That being so, the length of detention, to the considered opinion of this court, can neither be a change of circumstance in favour of the accused nor be it a ground of releasing the accused on bail. 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. Moreover, 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 and 52-A of NDPS Act has not been complied with, yet, said aspect has already been considered by this court in the first bail application and the same cannot be reviewed. Moreover, said aspect can be looked into at the time of trial not at this stage as held by Hon'ble Supreme Court in the case of **Baldev Singh vs. State of Punjab** reported in **(1999) 6 SCC 172**.

9. It also appears that the investigation is yet to be completed.

10. Under the aforementioned facts and circumstances, this Court is of the view that this petition is not maintainable and it is not a fit case grant the privilege of bail to the accused.

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

JUDGE

Comparing Assistant