

GAHC010067232024



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

Case No. : Bail Appln./979/2024

KUNDAN THAKUR
S/O LALAN THAKUR,
R/O VILL- KHATKHATI P.S. BOKAJAN
DIST. GOLAGHAT, ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR BHARGAV DAS
Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI

ORDER

26.04.2024

Heard Mr. A. Baruah, learned counsel appearing for the accused petitioner as well as Mr. R. R. Kaushik, learned Addl. P.P., Assam appearing for the State respondent.

By this petition under Section 439 Cr.P.C., the accused-petitioner, namely, **Kundan Thakur**, has prayed for grant of bail in connection with **Dispur P.S. Case No.2277/2023** under Sections **21(b)/22(C)/29 of NDPS Act.**

Case diary as called for is placed before this Court.

The brief fact of the case is that on 08.12.2023, officer in-charge of Dispur PS received an information from reliable source that business of drug trafficking since long time is going on at Ganapati Enclave, Sewali Path, Hengrabari area under Dispur PS. Accordingly, a GD entry was recorded vide Dispur PS GD entry No.50 dated 07.12.2023. Accordingly, a team from Crime Branch raided Ganapati Enclave, Sewali Path and arrested the present petitioner along with another accused Digbijoy Navis. One transparent plastic packet containing to be suspected cocaine having total 33.71 grams and another plastic packet containing 11.64 grams of suspect MDMA and other articles were recovered from a vehicle bearing No. AS 01 AM 0008 (Askoda Suprb) which belongs to the co-accused, Digbijoy Navis.

Learned counsel for the petitioner has submitted that from the FIR it is evidently clear that the alleged contraband was never found from the conscious possession of the accused petitioner. There was gross violation of Section 42 of the NDPS Act which is mandatory in nature. Therefore, the non-compliance of mandatory provision of Section 42 of the NDPS Act, the entire search and seizure is vitiated and creates the shadow of doubt.

It is further submitted that mere general diary entry does not amount to due compliance of Section 42(1) and 42(2) of the NDPS Act and the entry taken down in the station diary cannot be treated as information recorded under Section 41(1) and (2) of NDPS Act. According to learned counsel for the petitioner, non-compliance of mandate of Section 42(1) and (2) is not permissible.

Learned counsel for the petitioner has further contended that despite not being found to be in possession of the seized suspected drug, the petitioner along with others were arrested without being informed for the grounds of their

arrest as mandated under Section 52(1) of the NDPS Act.

According to learned counsel for the petitioner, the accused petitioner has been languishing in judicial custody more than 130 days as such further detention is no longer necessary for the purpose of investigation. Moreover, the Hon'ble Supreme Court in the case of *Satender Kumar Until Vs CBI and another* reported in (2022) 10 SCC 51 has clearly stated that even in offences under the Special Act, the bail application must be decided on merits on a case to case basis based on the general principle of "bail is the rule and jail is the exception"

In support of his submission learned counsel also has placed reliance on the following case laws:

- (i) (2011) 11 SCC 347 (*Ram Singh vs CBI*)
- (ii) (2021) 10 SCC 100 (*Union of India vs Nawaz Khan*).

In response, learned Additional Public Prosecutor has submitted that during investigation suspected cocaine and MDMA were recovered from a vehicle bearing No. AS 01 AM 0008 which was parked in the campus of Ganapati Enclave located at Sewali Path, Hengrabari. The present petitioner and the owner of the vehicle Digbijoy Navis were involved with the alleged offence. The investigation is going on. According to learned Additional Public Prosecutor, at this stage of investigation, the petitioner may not be enlarged on bail.

I have perused the case diary and considered the submission of the learned counsel for both the parties. As per seizure list, the contraband item was recovered from two persons i.e. the present petitioner and co-accused Digbijoy Navis. The commercial quantity of contraband was recovered from their possession. Investigation is still in progress. On perusal of case diary and the materials available thereon does not allow this Court to grant bail at this stage.

Accordingly, the bail prayer of the petitioner stands rejected.

Return the case diary.

In terms of the above, this bail application stands disposed of.

JUDGE

Comparing Assistant