

GAHC010067552024



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

Case No. : Bail Appln./957/2024

SRI. CHANDRA BHUSHAN JHA
S/O. HARE RAM JHA,
R/O. BHARWARI, P.O. BHARWARI, P.S. ROSERA, DIST. SAMASTIPUR,
BIHAR, PIN-848202

VERSUS

DIRECTOR OF REVENUE INTELLIGENCE
GUWAHATI ZONAL UNIT, MAINAAK TOWER, CHRISTIAN BASTI, G.S.
ROAD, GUWAHATI, POLICESTATION- DISPUR, DISTRICT- KAMRUP (M),
ASSAM

Advocate for the Petitioner : MR. D SUTRADHAR

Advocate for the Respondent : SC, DRI

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

Date : 10.04.2024

- 1)** Heard Mr. N. N. B. Choudhury, learned counsel for the petitioner. Also heard Mr. S. C. Keyal, learned Standing Counsel, DRI.
- 2)** This application under Section 439 of the Code of Criminal Procedure,

1973 has been filed by the petitioner, namely, Chandra Bhushan Jha, who is detained behind the bars since 18.02.2024 (for the last 52 days) in connection with D.R.I. Case No. 23/CL/IMP/PS & BP/DRI/GZU/2023-2024 under Section 112 and 135 of the Customs Acts, 1962.

3) The gist of accusation in this case is that on 08.02.2024, an information was received by DRI officials that a substantial quantity of smuggled poppy seeds and black pepper of foreign origin are being transported in a Mahindra truck bearing registration No. JK-05-M-0617 coming from Mizoram, which will be reaching Guwahati on 08.02.2024.

4) Accordingly, the DRI officials intercepted the said truck and recovered 16990 kgs of poppy seeds and 400 kgs of black pepper from the said truck and apprehended the two persons, namely, Md. Asif Qureshi and Md. Maroof, who had failed to produce any document regarding the said consignment. Later on, on the basis of voluntary statement made by the apprehended persons that it is the present petitioner who had loaded the said poppy seeds and pepper seeds in the intercepted truck.

5) Further, on 03.02.2024, the DRI, Aizwal Regional Unit seized 78 bags of black peppers of foreign origin weighing about 3510 kgs from the godown of the present petitioner located at Aizawl, Mizoram. Thereafter, on 18.02.2023, the present petitioner was arrested.

6) Learned counsel for the petitioner has submitted that the petitioner has been arrested only on the basis of statement of the co-accused persons as nothing was seized from his possession.

7) Learned counsel for the petitioner has also submitted that the maximum punishment which may be imposed for an offence under Section 135 of the Customs Act, 1962 is imprisonment which may extend to 7 years and for

an offence under Section 112 only fine may be imposed with no sentence of imprisonment. Therefore, the requirement of issuance of notice under Section 41A of the Code of Criminal Procedure, 1973 is mandatory.

8) However, in the instant case, no notice under Section 41A of the Code of Criminal Procedure, 1973 has been served on the present petitioner, neither any reason has been shown for arresting the petitioner without issuance of notice under Section 41A.

9) Learned counsel for the petitioner has submitted that the trial court also ordered in passing the order dated 22.03.2024 in Bail Application No.231/2024, whereby the prayer for bail of the present petitioner was rejected and whereby an observation was made that the notice under Section 108 of the Customs Act, 1962 is akin to the provisions of Section 41A of the Code of Criminal Procedure, 1973.

10) It is submitted by learned counsel for the petitioner that as the notice under Section 108 of the Customs Act, 1962 relates to only production of documents and examination of witnesses, whereas notice under Section 41A is to be given to all such persons where the police is of opinion that the person against whom some accusation has been made is not required to be arrested.

11) Learned counsel for the petitioner has also submitted that otherwise also the petitioner has already been detained behind the bars for last 52 days and whereas the maximum period of detention for an offence under Section 135 and 112 of the Customs Act, 1962 is only 60 days under Section 167 of the Code of Criminal Procedure, 1973. Therefore, considering the period of detention already undergone, the counsel has made a prayer for allowing the petitioner to go on bail.

12) On the other hand, learned Standing Counsel, DRI has produced the

case diary of D.R.I. Case No. 23/CL/IMP/PS & BP/DRI/GZU/2023-2024 and has submitted that a huge quantity of poppy seeds and black pepper seeds were recovered in this case and evasion of the custom duty in this case is to the tune of more than Rupees One Crore.

13) It is also submitted by learned Standing Counsel, DRI that for an offence under Customs Act, 1962 notice under Section 41A need not to be issued as it is a special act and notice under Section 108 of the Customs Act, 1962 is akin to the notice under Section 41A of the Code of Criminal Procedure, 1973.

14) Learned Standing Counsel, DRI has also submitted that the investigation has not yet been completed and the custodial detention of the petitioner would be necessary for completion of the investigation and therefore, he has opposed the grant of bail to the present petitioner.

15) I have considered the submissions made by learned counsel for both the sides and have perused the materials available on the case record, including the case diary produced by learned Standing Counsel, DRI.

16) Apparently, for the offences under which the accusation has been made against the present petitioner, namely Section 135 of the Customs Act, 1962 as well as Section 112 of the Customs Act, 1962 and Section 112 of the Customs Act, 1962, the maximum punishment which may be imposed is imprisonment up to seven years.

17) Hence, apparently the mandate of the issuance of notice under Section 41A of the Code of Criminal Procedure, 1973 has observed by the Apex Court in the case of above-named petitioner, "**Arnesh Kumar Vs. State of Bihar and Another**", reported in **(2014) 8 SCC 273** is mandatory.

18) It also appears that the provisions of Section 41A of the Code of Criminal Procedure, 1973 as well as provision of 108 of the Customs Act, 1962 does

prima facie appears to be similar in nature, whereas the section is the power of the Gazetted Officers of customs to summon persons to give evidence and to produce document, whereas on the other hand, Section 41A relates to the duty of the Police Officer to issue notice to a person suspected of committing an offence to appear before him whose arrest is not required to be made.

19) However, this Court is not inclined to deal with the said question in detail as this bail application may be considered even without considering the said issue, as from the materials available in the case diary, it appears that the investigation has fairly progressed and considering the period of detention already undergone by the present petitioner, i.e. 52 days, his further custodial detention does not appear to be necessary if he otherwise cooperates in the investigation.

20) In view of above, the above-named petitioner is hereby allowed to go on bail of Rs. 50,000/- (Rupees Fifty Thousand only) with one surety of like amount to the satisfaction of learned Chief Judicial Magistrate, Kamrup (M) with following conditions:

- i. That the petitioner shall co-operate in the investigation.
- ii. That the petitioner shall not directly or indirectly make any inducement, threat or promise to any person who may be acquainted with the facts of the case, so as to dissuade such person from disclosing such facts of the case before the Investigating Officer.

21) With the above observations, this bail application is hereby disposed of.

JUDGE

Comparing Assistant