

GAHC010073852024



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

Case No. : Bail Appln./1033/2024

KESHAB KALITA
S/O LATE JINTENDRA KALITA
R/O UDAY NAGAR, SECTOR-3,
P.S. NOONMATI
DIST. KAMRUP (M), ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. R K PRADHAN

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY

ORDER

Date : 08-04-2024

Heard Mr. A.K. Saikia, learned counsel for the accused-petitioner and Ms. N. Das, learned Additional Public Prosecutor for the respondent State of Assam.

2. By this application under Section 439, Code of Criminal Procedure, 1973 [CrPC], the accused-petitioner viz. Keshab Kalita has prayed for his release on bail in connection with Noonmati Police Station Case no. 57/2024 registered under Section 379, Indian Penal Code [IPC] read with Section 7 of the Essential Commodities Act, 1955.

3. The accused-petitioner after being arrested, was produced before the court of learned Chief Judicial Magistrate, Kamrup [Metro], Guwahati on 09.03.2024 and since then the accused-petitioner is in custody for a period of 30 days till date.

4. The First Information Report [FIR] was lodged by a police personnel, attached to Noonmati Police Station before the Officer In-Charge, Noonmati Police Station alleging *inter alia* that at about 09-00 am, on 08.03.2024, an auto rickshaw, without any number of plate, was intercepted near Maria's Public School, Narengi during patrolling. The auto rickshaw was found to be carrying 8 nos. of plastic drums containing about 450 litres of diesel, suspected to be stolen. As the accused-petitioner who was driving the said auto rickshaw, failed to produce any voucher, etc. on being asked, the auto rickshaw as well as the diesel, suspected to be stolen, were seized and the accused-appellant had been arrested.

5. Mr. Saikia, learned counsel for the accused-petitioner has submitted that as per Section 7 of the Petroleum Act, 1934, a person need not obtain a licence for transport or storage of Petroleum Class-B, if the total quantity in his possession at any one place does not exceed 2500 litres and none of it is contained in a receptacle exceeding 1000 litres in capacity. He has contended that as per the provisions of Section 23[1][a] of the Petroleum Act, 1934, whoever in contravention of Section 3, transports or stores any petroleum, he can be punished with imprisonment which may extend to one month or with fine, which may extend to Rs. 1000/- or with both and thus, such offence is bailable in nature. He has further contended that Section 7 of the Essential Commodities Act, 1955 has been held to be bailable by the Judgment and Order dated 27.11.2017, passed by Division Bench of this Court in AB no. 1205/2017 [Jayanta Kumar Das vs. State of Assam].

6. The learned Additional Public Prosecutor has contended that the accused-petitioner is suspected to be a part of a gang involved in stealing of petroleum products in the Guwahati Refinery area.

7. It has been held in the case of **Kailash Kumar Agarwala vs. State of Assam**, reported in [2004] 2 GLT 347, offence under Section 23[1][a] of the Petroleum Act, 1934 is bailable.

Though the said offence is not involved in Noonmati Police Station Case no. 57/2024, it is of some relevance in the context of the case as the diesel found to be transported by the accused-petitioner was only suspected to be stolen. In any view of the matter, accused-petitioner is in custody for 30 days and the investigation of the case must have progressed substantially. Considering the period of custody of the accused-petitioner, this Court is of the considered view that further custodial detention of the accused-petitioner for the purpose of carrying out further investigation is not necessary and his release on bail at this stage of investigation is not likely to cause any prejudice, provided he continues to extend his assistance and cooperation in the further investigation of the case.

8. Accordingly, the accused-petitioner is allowed to be enlarged on bail on furnishing a bail bond of Rs. 25,000/- with one local surety of the like amount to the satisfaction of the learned Chief Judicial Magistrate, Kamrup [Metro], subject to the following conditions :-

- [i] the accused-petitioner shall co-operate with the investigation and make himself available for interrogation whenever required by the Investigating Officer [I.O.] of the case;
- [ii] the accused-petitioner shall not, directly or indirectly, make any inducement, threat or promise to any witness acquainted with the facts of the case so as to dissuade him from disclosing such facts to the court or to any police officer;
- [iii] the accused-petitioner shall not obstruct or hamper the police investigation and not to play mischief with the evidence collected or yet to be collected by the police;
- [iv] the accused-petitioner shall maintain law and order and he shall not commit an offence similar to the offence of which he is accused, or of the commission of which he is suspected;
- [v] the accused-petitioner shall regularly remain present during the trial and co-operate the Court to complete the trial for the above offences, if charge sheeted in the case;

9. The bail application stands disposed of in the aforesaid terms.

JUDGE

Comparing Assistant