

GAHC010082732024



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

Case No. : Bail Appln./1204/2024

MEGHAN PASWAN AND ANR.
S/O DHAMAULL PASWAN,
VILL.- NONIYA TOLA, DADHAPUR,
P.O. AND P.S.- BIBHUTIPUR,
DIST.- SAMASTIPUR, BIHAR- 848211.

2: DHARMENDRA PASWAN
S/O RAMVRIKSH PASWAN

VILL.- NEW DHANESHPUR UTTAR

P.O. AND P.S.- VIDHYAPATI NAGAR

DIST.- SAMASTIPUR
BIHAR- 848503

VERSUS

THE STATE OF ASSAM
REP. BY THE P.P., ASSAM.

Advocate for the Petitioner : MR. M I HUSSAIN

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI

ORDER

Date : 17.05.2024

Heard Mr. M.I. Hussain, learned counsel for the petitioners. Also heard Mr.

R.R. Kaushik, learned Additional Public Prosecutor for the State.

2. This is an application filed under **Section 439 Cr.P.C.**, seeking bail by the petitioners, namely, **Meghan Paswan and Dharmendra Paswan**, in connection with **Bongaigaon GRPS Case No. 12/2027 under Section 20(b)(ii) C/ 29 of NDPS Act, 1985.**

3. The case of the petitioners is that on 11.02.2024, an FIR has been lodged before the I/C GRPS, New Bongaigaon stating *inter alia* that on 10.02.2024 at about 11.05 p.m. while the petitioners were traveling Bengaluru Humsafar Express Train (No. 12504), the railway police started checking when the train arrived at New Bongaigaon railway station. During checking, 9.8 kg of cannabis was recovered from the petitioners and 4 kg and 5.40 kg were recovered from Ramen Debbarma and Eti Bebbarma respectively and 9.5 kg of cannabis was recovered from Mustkin. As such, the total cannabis recovered from five accused persons were weighing about 29 kg. Accordingly, a case was registered vide New Bongaigaon GRPS Case No. 12/2024 under Section 20(b)(ii) C/29 of NDPS Act, 1985.

4. The learned counsel for the petitioners has submitted that from both accused persons, 9.8 kg of cannabis was recovered which are intermediate quantity and from the possession of other co-accused, the total cannabis recovered weighing about 29 kgs which is commercial quantity. It is also submitted that the quantity recovered from the co-accused cannot be added to the quantity recovered from the present petitioners. Therefore, rigour of Section 37 of NDPS Act will not apply in the present case.

5. According to learned counsel for the petitioners that the petitioners used

to work as daily wage earner in a private company namely NESTA Protein Pvt. TIDC, Dukli Industrial area, Dukli West, Tripura, Agartala. The petitioners are the actual resident of Bihar. The petitioner No. 1 is the brother-in-law of the petitioner No. 2. On 09.02.2024, suddenly, a 15 years old daughter of the petitioner No. 1 expired and after getting the information, they purchased tatkal ticket from Agartala to Bihar for their schedule journey on 10.02.2024. But due to some unavoidable circumstances, they were not in a position to travel on that day. Subsequently, they purchased another ticket for their journey from Agartala to Bihar on 11.02.2024 and when the train arrived at New Bongaigaon railway station, they were intercepted and arrested.

6. Per contra, Mr. Kaushik, learned Additional Public Prosecutor submits that in this case five persons were arrested. All the accused persons entered in to a criminal conspiracy for supplying of cannabis. As per CDRs, all accused persons were in touch with each other. Further, recoveries of contraband have been affected jointly from all the accused persons and regour of Section 37 of NDPS are applicable in this case.

7. I have considered the submission made by the learned counsel for the parties. I have also perused the case diary.

8. It appears that 29 kg of cannabis were recovered from five persons and they were traveling in the same train i.e. Bengaluru Humsafar Express Train (No. 12504) and in the same coach. It also appears that all the accused persons are known to each other.

9. In the case of *Madan Lal And Anr. vs State of Himachal Pradesh*, reported

in *2003 (7) SCC 465*, the Hon'ble Supreme Court held that while dealing a case where all the accused persons were travelling in a vehicle when they were nabbed and recoveries were made from them. The relevant extracts from the said judgment are reproduced below-

“Whether there was conscious possession has to be determined with reference to the factual backdrop. The facts which can be culled out from the evidence on record is that all the accused persons were traveling in a vehicle and as noted by the Trial Court they were known to each other and it has not been explained or shown as to how they travelled together from the same destination in a vehicle which was not a public vehicle.”

10. Section 20 (b) makes possession of contraband articles an offence. [Section 20](#) appears in chapter IV of the Act which relates to offence for possession of such articles. It is submitted that in order to make the possession illicit, there must be a conscious possession.

11. The aforesaid judgment of Madan Lal (supra) was relied upon by the Hon'ble Supreme Court in the case of Union of India vs. Nawaz Khan Criminal Appeal 1043 of 2023, a car in which the co-accused were travelling was intercepted and search of the car revealed two polythene packets hidden in the car. The first packet contained 1.740 kg and the second contained 1.750 kg samples. The samples were sent for testing and tested positive for heroin. One of the co-accused sought bail on the ground that he was only a companion in the vehicle and was not in a conscious possession of the contraband and provisions of Section 50 of NDPS Act were not complied with. The Supreme Court rejected the bail application while noting that the accused was not an

unknown passenger in the vehicle but was someone in close contact with the other co-accused.

12. In the present case, all the accused persons were travelling together in Bengaluru Humsafar Express Train (No. 12504) and the total quantity of cannabis was 29 kg recovered from the five accused persons including the present petitioners. Merely because of bag with 9.8 kg was recovered from the petitioners, it cannot be said that the recovery made from the accused including the present petitioners was not commercial quantity. As per seizure list, the seizure was made from five accused who were travelling together in the same train.

13. Considering the aforesaid facts and circumstances and that the accused persons along with other co-accused persons were travelling together in a same train and the same coach and also their destination were same and large commercial quantity of cannabis were recovered from their possession, in my considered opinion, the twin conditions as mentioned in Section 37 of NDPS Act are not satisfied and hence, bail cannot be granted to the petitioners at this stage.

14. In view of the above, this Court is not inclined to grant bail to the petitioners. Hence, prayer for bail is rejected.

15. The observation made above, shall confine for the purpose of disposal of this bail application only and shall not in any way affect the proceeding of the trial.

JUDGE

Comparing Assistant