

GAHC010086402024



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

Case No. : Bail Appln./1266/2024

TANMOY GUPTA
S/O LATE RATHINDRA KR. GUPTA
R/O VILL- USHA BAZAR, AIRPORT ROAD, AGARTALA, P.S. AGARTALA,
AIRPORT, DIST. WEST TRIPURA,
STATE- TRIPURA,
PIN CODE- 799009

VERSUS

THE STATE OF ASSAM
REP BY THE PP, ASSAM

Advocate for the Petitioner : MR S RAHMAN

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

ORDER

Date : 28-05-2024

Heard Mr. S. Rahman, learned counsel for the petitioner Tanmoy Gupta.

2. The petitioner has filed this application under Section 439 of the Code of Criminal Procedure, 1973 (CrPC for short) with a prayer for bail as he is behind

bars since 27.03.2023 in connection with NDPS Case No. 82/2023 arising out of Garchuk Police Station Case No.90/2023 under Sections 20(c)/29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (the NDPS Act for short).

3. Heard Mr. B.B. Gogoi, learned Additional Public Prosecutor, Assam for the respondent State.

4. It is submitted on behalf of the petitioner that the petitioner is behind bars for 1 (One) year 2 (Two) months. His right to personal liberty has been curtailed as he was erroneously roped in connection with this case as the owner of the truck seized in connection with this case. It is submitted that in reality the owner of the truck is Dilip Kumar Saha and not the petitioner. The petitioner has annexed the RC of the truck as Annexure-8 of the petition which reveals that the truck bearing registration No. TR-01-AU-1894 seized in connection with this case belongs to Dilip Kumar Saha and not the petitioner.

5. The learned Additional Public Prosecutor has raised serious objection stating that this is not a case where trial has been procrastinated by the prosecution or by the Court. Charge has been framed and this case has been fixed for evidence on 10.06.2024. At this nascent stage the petitioner cannot be granted bail by holding that his personal liberty has been curtailed due to procrastination of trial. Charge sheet has been laid against him as a prima facie case is established against him that he is complicit.

6. I have considered the submissions at the bar with circumspection.

7. The FIR unfolds that a reliable information was received by the Officer-In-Charge of Garchuk Police Station that a truck bearing registration No. TR-01-AU-1894 was approaching from Tripura carrying huge quantity of cannabis (ganja) towards Jalukbari side to sell the same at different places under Garchuk Police

Station. The investigating team reached the place of occurrence near Lalung Gaon in front of Bharat Petrol Pump at 04.30 PM and after a while, they noticed a truck bearing registration No. TR-01-AU-1894 was coming from Lokhra side and passing through NH-27 on the service road. The truck was signaled to be stopped but the driver of the truck tried to escape. The vehicle was intercepted near Lalung Gaon and the investigating team found two persons inside the vehicle. On interrogation the miscreants tried to cover up through misinformation but finally on a thorough search, 14 (Fourteen) packets were recovered inside the cabin, concealed under the driver's seat. The 2 (Two) miscreants were Babul Biswas and Haradhan Rishi. 76.881 Kgs of suspected ganja were recovered from their possession.

8. During investigation the petitioner was arrested and forwarded to custody. The petitioner has prayed for bail on the ground of parity as the co-accused have been enlarged on bail.

9. I have scrutinized the Case Diary and the Trial Court Records.

10. It is true that the RC marked as Annexure-8 reveals that the owner of the truck bearing registration No. TR-01-AU-1894 is Dilip Kumar Saha. It cannot be ignored that charge sheet was submitted on finding prima facie materials against the present petitioner. The ground of parity is not applicable to the present petitioner.

11. It has been observed by the Hon'ble Supreme Court in ***Tarun Kumar -Vs- Assistant Director, Directorate of Enforcement;*** reported in **(2023) 4 Crimes (SC) 442**, that-

“19. It is axiomatic that the principle of parity is based on the guarantee of positive equality before law enshrined in Article 14 of the Constitution. However, if any illegality or irregularity has been committed in favour of any individual or a group of individuals, or a wrong order has been passed by a judicial forum, others cannot invoke the jurisdiction of the higher or superior court for repeating or multiplying the same irregularity or illegality or for passing similar wrong order. Article 14 is not meant to perpetuate the illegality or irregularity. If there has been a benefit or advantage conferred on one or a set of people by any authority or by the court, without legal basis or justification, other persons could not claim as a matter of right the benefit on the basis of such wrong decision.”

12. The double pronged condition of Section 37 of the NDPS Act, acts as an embargo in this case. The ground on the basis of which the co-accused have been released is not applicable in this present case.

13. In view of my foregoing discussions, petition with prayer for bail is rejected at this stage.

14. In the above terms and observations, this Bail Application stands disposed of.

JUDGE

Comparing Assistant