

GAHC010089592024



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

Case No. : Bail Appln./1321/2024

DIPANTA CHANDRA NATH
S/O MANIK CHANDRA NATH
R/O AGNIPASHA, WARD NO. 3,
P.O. AND P.S. PANISARGAR, 799260, DIST. NORTH TRIPURA, TRIPURA.

VERSUS

THE STATE OF ASSAM
REP BY THE PP, ASSAM

Advocate for the Petitioner : MR B MALAKAR

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI

ORDER

Date : 29.05.2024

Heard Mr. B. Malakar, learned counsel for the accused-petitioner as well as
Mr. D.P. Goswami, learned Additional Public Prosecutor for the State.

2. This is an application filed under **Section 439 Cr.P.C.**, seeking bail by the accused-petitioner, namely, **Dipanta Chandra Nath**, in connection with **Special Case (NDPS) No. 94/2023**, registered under Section **22(c)/25/29 of NDPS Act**, pending in the court of learned **Additional Sessions Judge, FTC, Karimganj, Assam**.

3 It has been submitted by the learned counsel for the accused/petitioner that the accused-petitioner is the driver of the vehicle bearing Regd. No. TR-04-D-1743 which was going towards Tripura from Guwahati. When the truck reached at near Churaibari watch post under Bazaricherra police station, the said vehicle was intercepted and it was thoroughly checked. On being searched, two nos. of carton containing 200 nos. of bottle of triprolidine hydrochloride and codeine phosphate cough syrup, Phensedyl and 15 pieces of small size doormats were recovered. It is also submitted that the consignor is R.B. Textile of Delhi for transportation of such goods from Dehli to Tripura and the consignee is one Shilpi Das of Agartala.

4. According to the learned counsel for the petitioner, though the consignor and consignee are the main persons for trafficking such contraband, but charge-sheet has been laid only against the present petitioner.

5. It is further submitted that the petitioner is no way connected with alleged offence, he was only the driver of the said vehicle for transportation of the goods. It is also submitted that the petitioner has been detained in custody for last 353 days since his arrest on 31.07.2023. As the petitioner has no knowledge about the alleged contraband items and also considering the length of detention, the petitioner may be enlarged on bail.

6. In support of his submission, the learned counsel for the petitioner has placed reliance on the following case laws-

(i) Rabi Prakash v. The State of Odisha, reported in 2023 O Supreme (SC) 707.

(ii) Lorik Ram vs. State of Assam, reported in 2022 (4) GLT 422.

(iii) Hussain Ahmed vs. The State of Assam, (BA/2979/2023).

7. On the other hand, Mr. Goswami, learned Additional Public Prosecutor for the State submits that the charge was framed on 11.03.2024 and the case is fixed for evidence of witnesses. It is true that no any witness has been examined in this case. The case is at the initial stage of trial. Therefore, considering the nature of offence, bail prayer of the petitioner may not be considered at this stage.

8. I have considered the submissions made by the learned counsel for the parties. I have also perused the trial court record.

9. The NDPS Act is a special Act with an inbuilt mechanism in the form of Section 37 relating to bail. As the commercial quantity of ganja was kept secretly in the inbuilt carrier/pocket which transpires that it was built for the purpose of carrying ganja/contraband. It is true that no any witness was examined in the case, however, it also appears that commercial quantity of contraband was kept concealed in the truck. The petitioner was the driver of the said truck.

10. The Hon'ble Supreme Court in the case of ***Chandrakeshwar Prasad Vs. State of Bihar***, reported in ***(2016) 9 SCC 443***, has laid down in clear terms that interest of the society is a relevant factor to be taken into account while considering the prayer for bail. For ready reference, the relevant paragraphs of the said case are extracted herein below:

"10. This Court in Rajesh Ranjan Yadav @ Pappu Yadav v. CBI through its Director (2007) 1 SCC 70 balanced the fundamental right to individual liberty with the interest of the society in the following terms in paragraph 16 thereof:

"We are of the opinion that while it is true that Article 21 is of great importance because it enshrines the fundamental right to individual liberty, but at the same time a balance has to be struck between the right to individual liberty and the interest of society. No right can be absolute, and reasonable restrictions can be placed on them. While it is true that one of the considerations in deciding whether to grant bail to an accused or not is whether he has been in jail for a long time, the court has also to take into consideration other facts and circumstances, such as the interest of the society."

11. On consideration of the matter in its entirety, this Court is of the view that this is not a fit case for grant of bail to the accused/petitioner, at this stage. Therefore, prayer for bail is **rejected**.

12. However, the learned Special Judge is directed to expedite the matter for examining the witnesses as early as possible and take much initiative to dispose of the matter.

13. The bail application stands disposed of.

JUDGE

Comparing Assistant