

GAHC010092272024



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

Case No. : Bail Appln./1352/2024

NITESH KUMAR AND ANR.
S/O LATE MAHESH RAY
R/O VILL- WARD NO. 13, TARIYANI, P.O. BISAMBHARPUR
P.S. SHEOHAR
DIST. SHEOHAR, BIHAR.

2: SUJEET KUMAR
S/O NABA KUMAR RAY
R/O VILL- SHEOPUR
P.S. MATIHARI
DIST. MATIHARI
BIHAR

VERSUS

THE STATE OF ASSAM
REP BY THE PP, ASSAM

Advocate for the Petitioner : MR S RAHMAN, MS. S PHUKAN

Advocate for the Respondent : PP, ASSAM,

**BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI**

ORDER

Date : 16.08.2024

Heard Mr. S.Rahman, learned counsel for the petitioners and Mr. R.J.Baruah, learned Addl.P.P. for the State respondent.

By filing this 2nd petition under Section 439 Cr.P.C., the accused-petitioners, namely, **1. Nitesh Kumar** and **2. Sujeet Kumar** have prayed for grant of bail in connection with NDPS Case No. 329/2022 (GRPS P.S. Case No.102/2022) under Section 17 (c)/29 of the NDPS Act pending in the court of learned Additional Sessions Judge No.5, Kamrup (M), Guwahati.

The case of the petitioners is that on 21.07.2022, an FIR has been lodged before the officer-in-charge of Guwahati GRPS stating inter alia that on that day while the staff of GRPS conducted routine checking at Guwahati Railway Station, Platform No. 1, during checking in Rajdhani Express Train in the morning hours, four persons including the petitioners were detained. After checking their belongings, commercial quantity of opium were recovered from their possession. They were travelling from Dimapur to Mazafarpur. Accordingly, the recovered opium was seized and the petitioners and two other co-accused were arrested.

Learned counsel for the petitioners submits that the petitioners have been languishing in judicial custody for more than two years. Though the petitioners earlier preferred Bail Application No.4463/2023 but the same was

rejected vide order dated 29.02.2024 with a direction to the trial court to take initiative to dispose of the case at the earliest. But there is no development in the trial and not a single witness appeared before the trial court.

It is also the submission of the learned counsel for the petitioners that as per the seizure list vide M.R No. 69/22 dated 21.07.2022, it is clearly mentioned that 1 kg of suspected opium was recovered from the possession of the petitioner No.1 which was below the commercial quantity. Regarding petitioner No. 2, vide M.R. 70/22, 1 kg of suspected opium was recovered from the possession of the petitioner No.2 which is also less than commercial quantity as per NDPS Act.

Learned counsel also referred the case of ***Sami Ullaha vs Superintendent , NCB***, reported in (2008) 6 SCC 471, where the Hon'ble Supreme Court has held that rigors of Section 37 of NDPS Act cannot be justified in cases of intermediate possession of narcotic substance.

By referring another Judgment vide ***Sunni Kapoor vs. state of Himachal Pradesh*** (CRMPM 2168 of 2020), it was held that any quantity less than commercial quantity does not warrant the rigors of Section 37 of NDPS Act meaning thereby the grant of bail is acceptable.

Per contra, learned Addl.P.P. submits that in view of the facts and circumstances of the case that as commercial quantity of opium was recovered from the four accused persons, they were travelling together and charge was also framed under Section 17 (C) of the NDPS Act as such, learned Addl.P.P. prays for dismissal of bail application.

Having heard learned counsel for the parties and on perusal of the case

records, the admitted fact is that the accused petitioners have been detained in custody for more than 2 years. Charge sheet has been laid on 22.12.2022. Charge was framed on 23.05.2023 but no witness is examined till date. Though the trial court was directed to expedite the trial of the case as per order dated 29.02.2024 but trial is still inconclusive. The prosecution has failed to examine any witness in this case.

As per seizure list, it appears that 1 Kg each of opium was seized from the possession of the petitioner Nos. 1 and 2 and the same comes within the intermediate quantity and the rigors of Section 37 of the NDPS Act is not applicable in the present case.

Without expressing any opinion on the merits or demerits of the trial that is in progress, taking into account the factum that the recovery from the petitioners stated to be 1 kg each of opium falling within the ambit of intermediate quantity, the petitioners are allowed to be released on bail.

Accordingly, it is provided that the petitioners named above shall be released on furnishing bail bond of **Rs. 2,00,000/-** (Two Lakhs) **each** with two sureties each of like amount to the satisfaction of the learned **Additional Sessions Judge No.5, Kamrup (M), Guwahati** subject to the following conditions;-

- (i) The petitioners shall not leave the territorial jurisdiction of learned **Additional Sessions Judge No.5, Kamrup (M), Guwahati** without prior written permission from him/her;
- (ii) That the petitioners shall continue to appear before the learned trial Court on all dates to be fixed from time to time till the case is disposed of;

(iii) That the petitioners shall not directly or indirectly make any inducement, threat or promise to any of the prosecution witnesses; and

(iv) Out of two sureties, one of the sureties must be a government employee in the State of Assam.

Violation of any condition shall tantamount to cancellation of bail.

The bail application stands disposed of.

JUDGE

Comparing Assistant