

GAHC010096352024



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

Case No. : Bail Appln./1433/2024

MUKESH YADAV
S/O LATE YOGENDRA YADAV
EKAMAB, P.O. EKAMBA
P.S. CHHORAI DIST. BEGUSARAI, BIHAR

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR H R CHOUDHURY

Advocate for the Respondent : PP, ASSAM

BEFORE
HON'BLE MR. JUSTICE ROBIN PHUKAN

ORDER

26.06.2024

Heard Mr. H.R. Choudhury, learned counsel for the applicant and also heard Mr. P.S. Lahkar, learned Additional Public Prosecutor, Assam, appearing for the State respondent.

2. This application under Section 439 Cr.P.C. is preferred by accused, namely, Mukesh

Yadav, who has been languishing in jail hazot since 29.01.2023 in connection with Special NDPS Case No.12/2023, arising out of Bazaricherra P.S. Case No.20/2023, under Section 22(c)/25/29 of the NDPS Act, for grant of bail.

3. It is to be noted here that the above noted case has been registered on the basis of one FIR lodged by S.I. Niranjan Das, on 29.01.2023. The essence of allegation made in the aforesaid FIR is that on 29.01.2023, during routine Naka checking at Naka check point of Churaibari, on NH-08, one six wheeler TATA LPT 1109 vehicle, bearing Registration No.AS-01MC-0376, which was coming from Guwahati towards Tripura, was intercepted and apprehended the driver, namely, Mukesh Yadav and on checking the vehicle, 8 nos. of cartoons, containing 1280 nos. of bottle of ESKUF Cough syrup were found and seized the same in presence of witnesses.

4. Mr. Choudhury, learned counsel for the accused submits that the accused has been languishing in jail hazot since 29.01.2023 and though charge-sheet has been submitted in this case, no witnesses have been examined till date and that the present accused is the driver of the vehicle and the owner of the vehicle has already been granted the privilege of pre-arrest bail in connection with AB No.3262/2023, vide order dated 04.03.2023 and that the vehicle was handed over to one company having the business of Express Cargo pickup and delivery by way of service contract vide Instrument No.2476A, dated 22.11.2022 and the contract period is from 10.01.2023 to 10.01.2026, and as such, he had no knowledge about the carried materials and as such, the embargo under Section 37 of the NDPS Act is not applicable and that the accused is ready to face trial and will appear before the Court on each and every date and therefore, it is contended to allow the petition.

5. On the other hand, Mr. P.S. Lahkar, learned Additional Public Prosecutor, Assam, has vehemently opposed the petition and submits that the accused is the driver of the vehicle from where commercial quantity of contraband substances were recovered and there is nothing on the record to satisfy the twin requirement of Section 37 of the NDPS Act and as such, Mr. Lahkar contended to dismiss the petition.

6. Having heard the submissions of learned Advocates of both sides, I have carefully gone through the petition and the documents placed on record and also perused the scanned copy of the record received from the learned Court below.

7. That perusal of the scanned copy of the record reveals that the case is pending at the stage of appearance though charge-sheet has been submitted here in this case. Further, the scanned copy of the record reveals that the accused was the driver of the vehicle from which the commercial quantity of contraband substances were recovered and as such, the accused has to satisfy the twin requirement of Section 37 of the NDPS Act. Though the learned counsel for the accused submits that the accused had no knowledge about the materials being carried in the vehicle being the same is given to a company and the company had engaged the vehicle in its business, yet, such an explanation is found to be not satisfactory and this court is not absolved from the level of scrutiny that requires to undertake, under Section 37(1)(b)(ii) of NDPS Act, as held by Hon'ble Supreme Court in **Union of India through NCB, Lucknow vs. Nawaz Khan**, reported in **(2021) 10 SCC 100**.

8. Here in this case, from the scanned copy of the record and also from the submission of learned counsel for the accused, this Court is unable to derive satisfaction that the accused is not guilty of the offence and that he will not commit any offence while on bail. It is to be noted here that in the case of **Union of India vs. Ajay Kumar Singh @ Pappu**, Criminal Appeal No.952 of 2023 [Arising out of SLP (CRL.) No.2351 OF 2023], decided on 28 March, 2023, Hon'ble Supreme Court has held as under:-

"In view of the above provisions, it is implicit that no person accused of an offence involving trade in commercial quantity of narcotics is liable to be released on bail unless the court is satisfied that there are reasonable grounds for believing that he is not guilty of such an offence and that he is not likely to commit any offence while on bail."

9. Having considered above, and also considering the facts and circumstances on the record and the nature and gravity of the offence and the punishment prescribed for the same, this Court is of the view that this is not a fit case where the privilege of bail can be

granted to the accused and accordingly, the same stands dismissed.

10. In terms of above, this bail application stands disposed of.

Sd/- Robin Phukan
JUDGE

Comparing Assistant