

GAHC010107752024



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

Case No. : Bail Appln./1574/2024

MD MUSTAKIM @ MD. MUSTKIM
S/O MD. NOUSAD, R/O VILL- NEW AMIRBAD, P.O.-BELUWA, P.S.-KATIHAR,
DIST- KATIHAR (BIHAR)

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

Advocate for the Petitioner : MR. S A AHMED, A. KHANAM, MR. F A AHMED

Advocate for the Respondent : PP, ASSAM,

BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI

ORDER

27.09.2024

Heard Mr. S. A. Ahmed, learned counsel for the petitioner and Mr. B. Sarma, learned Additional Public Prosecutor for the State respondent.

2. By this application filed under Section 439 Cr.P.C., seeking bail by the accused-petitioner, namely, **Md. Mustakim @ Md. Mustkim**, in connection with **Bongaigaon GRPS Case No. 12/2004 under Section 20(b)(ii)c/29**

of NDPS Act.

3. The case of the petitioner 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 petitioner and the co-accused were travelling Bengaluru Humsafar Express Train (No. 12504), the railway police started checking when the train arrived at New Bongaigaon railway station. During checking, 9.5 kg of cannabis was recovered from the petitioner and remaining 9.8 kgs, 4 kg and 5.4 kgs were recovered from other co-accused weighing the total cannabis about 29 kgs. 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 petitioner has submitted that 9.5 kgs of cannabis was recovered from the possession of the petitioner which is intermediate quantity and which cannot be clubbed with the contraband items recovered from the possession of other co-accused. The accused person has been languishing in judicial custody since 11.02.2024 and considering length of detention, the privilege of bail may be granted to him.

5. Learned Additional Public Prosecutor submits that in this case the present petitioner along with other co-accused were arrested. All the accused persons entered into a criminal conspiracy for supplying of cannabis. The recovered items are of commercial quantity and as such, bail may not be considered at this stage of trial.

6. I have considered the submission made by the learned counsel for the parties.

7. I have also perused the scanned copy of the case records.
8. It appears that 29 kg of cannabis were recovered from the present petitioner along with four other co-accused persons while they were travelling 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. The recovered items fall in the commercial quantity.
9. In the case of ***Madan Lal And Anr. vs State of Himachal Pradesh***, reported in ***2003 v. 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. 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.

11. 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 9.5 kg was recovered from the petitioner, it cannot be said that the recovery made from the accused including the present petitioner was not commercial quantity. As per seizure list, the seizure was made from five accused who were travelling together in the same train.

12. Considering the aforesaid facts and circumstances and that the accused petitioner along with other co-accused persons were travelling together in a same train and in 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 petitioner at this stage.

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

14. 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