

GAHC010120222024



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

Case No. : Bail Appln./1739/2024

DIJOY BORO
S/O SRI AKASH BORO
R/O VILL- NIZ BETNA
P.O. KERPABHITHA
P.S. GORESWAR
DIST. TAMULPUR (BTR), ASSAM
PIN-781366

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. M KALITA

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI

ORDER

Date : 18.07.2024

Heard Mr. M. Kalita, learned counsel for the accused-petitioner as well as Mr. R.J. Baruah, learned Additional Public Prosecutor for the State.

2. By this petition filed under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023, the petitioner, namely, **Dijoy Boro**, has prayed for granting bail in connection with **Udalguri P.S. Case No. 12/2024**, registered under Section **20(b)(ii)(C) of NDPS Act**.

3. The case of the petitioner is that on 30.01.2024, on receipt of specific information from a reliable source, that the driver of a vehicle bearing Regd. No. AS-01-FE-5595 was carrying suspected cannabis plants in his vehicle from Rowta side. Accordingly, the vehicle was intercepted and 45.33 kg of ganja was recovered from the vehicle. Subsequently, the said ganja was seized and the petitioner who was the driving of the vehicle at the relevant time, was arrested.

4. It is submitted by the learned counsel for the accused/petitioner that the accused-petitioner has been detained in custody for last 169 days since his arrest on 31.01.2024. It is also submitted that the petitioner has no knowledge regarding carrying of such ganja in the said vehicle because he is the driver of the vehicle. He was only asked to drive the vehicle by the owner. Considering the length of detention and background of the case, the petitioner may be enlarged on bail.

5. On the other hand, Mr. Baruah, learned Additional Public Prosecutor for the State produced the case diary and submits that commercial quantity of ganja was recovered from a truck which was driven by the petitioner. It is also submitted that the petitioner is the cousin of the owner of the vehicle Khaneswari Basumatary. The FSL report is also available in the case diary which gave positive test for cannabis. Therefore, considering the

nature of offence, bail prayer of the petitioner may not be considered at this stage.

6. I have considered the submissions made by the learned counsel for the parties. I have also perused the case diary.

7. It appears that 45.33 kg of ganja was recovered from a vehicle bearing Regd. No. AS-01-FE-5595, which was driven by the petitioner.

8. The NDPS Act is a special Act with an inbuilt mechanism in the form of Section 37 relating to bail. The commercial quantity of ganja was kept secretly in the said vehicle for the purpose of carrying the 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 vehicle. The petitioner is the driver of the said vehicle.

9. 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."

10. 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**.

11. The bail application stands disposed of.

12. Send back the case diary.

JUDGE

Comparing Assistant