

GAHC010125062024



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

Case No. : Bail Appln./1832/2024

DINGSANG K SANGMA @ DINGSAN SANGMA
S/O HEWINGSTON R MARAK
R/O WAKSO RONGSEPGRE
NORTH GARO HILLS,
MEGHALAYA, PIN-794002

VERSUS

THE STATE OF ASSAM
T BE REP BY THE PP, ASSAM

Advocate for the Petitioner : MR. M A CHOUDHURY

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

Date : 19-07-2024

- 1.** Heard Mr. M.A. Choudhury, learned counsel for the petitioner. Also heard Mr. K. Baishya, learned Addl. PP, Assam.
- 2.** This application under Section 439 of the Code of Criminal Procedure, 1973

has been filed by the petitioner Dingsang K Sangma @ Dingsan Sangma who is detained behind the bars since 03.04.2023 (for last 472 days) in connection with Special (NDPS) Case No. 33/2023 corresponding to Bazaricherra P.S. Case No. 76/2023 under Sections 22(c)/25/29 of the NDPS Act, 1985.

3. The gist of accusation in this case is that on 03.04.2023 one Niranjan Das, S. I. Police, lodged an FIR before the Officer-In-Charge of Bazaricherra Police Station, inter-alia, alleging that as per the routine Naka checking duty at Churaibari Watch Post at National Highway No. 8, one six wheeler Tata vehicle bearing registration number AS 01 MC 0387 was intercepted which was coming from Guwahati side and proceeding towards Tripura.

4. Learned counsel for the petitioner has submitted that the above named petitioner is the helper who was engaged in the truck which was seized in connection with this case. He has also submitted that earlier the driver of the truck has already been granted bail by this Court by order dated 11.01.2024 passed in Bail Appln. No. 3785/2023. It is submitted by learned counsel for the petitioner that during checking of the seized vehicle it was found that the body of the truck was locked with an orange coloured bolt sealed lock of GATIKWE bearing lock No. 262666191. The bolt sealed lock was broken to open the container of the body of the truck and after breaking the sealed lock, the container was checked and during checking 10 numbers of packets contained codeine phosphate phensedyl cough syrup were found inside the said truck, the said 10 numbers of bags contained 2000 numbers of bottles of codeine phosphate phensedyl cough syrup and each bottle contained 100 ml quantity of cough syrup.

5. Learned counsel for the petitioner has submitted that the petitioner was only the helper engaged in the seized vehicle which was a container truck of

GATIKWE courier company and the container of the said truck was bolt with sealed lock, which can be opened only through an authorized person and the helper i.e., the present petitioner, was unaware of the content of the container, as he was not authorized to either lock or to open the container.

6. Learned counsel for the petitioner has also submitted that the seized vehicle has already been given in zimma to the owner of the vehicle on the ground that the owner of the vehicle had entered into an agreement with GATI Kintetsu Express Pvt. Limited for a period of three years, and the owner was not aware of the fact as to what are the contents of the container.

7. Learned counsel for the petitioner has also submitted that as the container was sealed with bolt seal lock of GATIKWE Courier company and the same can be opened only by those authorized persons of the said courier vehicle and there is nothing on record to suggest that the present petitioner, who was only a helper of the said vehicle was aware of the contents of the said truck, he may not be regarded as having conscious possession of the contents of the said truck.

8. On the other hand, learned Additional Public Prosecutor, though opposed the grant of bail on the ground that the present case involves commercial quantity of contraband and hence Section 37 of the NDPS Act comes into play. However, he fairly submits that in this case only driver and helper were made the accused and even during investigation the original consignor or the consignee of the courier company were not made accused.

9. I have considered the submissions made by learned counsel for both sides, and have gone through the materials available on record including the scanned copy of the case record of NDPS Case No. 33/2023.

10. It appears from the materials on record i.e., the case diary which is available before this Court that the vehicle from which the contraband was recovered was found under bolt seal lock of GATIKWE Courier Company and it also appears that there is nothing to show that the said bolt seal lock was tampered or was opened before being searched by the Seizing Officer.

11. Further, it also appears that the said bolt seal lock could be opened only by the authorized person at the destination point and the helper of the vehicle i.e., the present petitioner was not authorized to open the said lock, and there is no material on record in the case diary to suggest that the petitioner was aware of the contents of the vehicle container and therefore, it may not be said that the present petitioner was in the conscious possession of the contraband recovered from the truck which he was driving.

12. Considering the above facts, this Court is of the considered opinion that the embargo of Section 37 of the NDPS Act is not applicable in this case, as there is reasonable ground to believe that the petitioner may not be guilty of the conscious possession of commercial quantity of contraband in this case.

13. Further, as there is no material to show that the petitioner has a previous antecedent of being involved in similar offences earlier, there is no material to come to the conclusion that if released on bail, the petitioner would indulge in committing similar offenses again.

14. Therefore, this Court is of the considered opinion that further custodial detention of the present petitioner is not justified. It is, however, made clear that the observations made herein above are only limited for the purpose of consideration of the instant bail application.

15. In view of the above, the petitioner is allowed to go on bail of Rs. 30,000/-

(Rupees Thirty Thousand only) with one surety of like amount subject to the satisfaction of the Special Judge, Karimganj with the following conditions:

- i. That the petitioner shall appear and cooperate in the trial pending against him before the Trial Court.
- ii. That the petitioner shall not directly or indirectly make any inducement, threat, or promise to any person who may be acquainted with the facts of the case, so as to dissuade such person from disclosing such facts before the Trial Court.
- iii. The Trial Court may impose any additional condition if it deems fit to do so while accepting bail bonds from the petitioner.

16. With the above observation, this bail application is accordingly disposed of.

17. Send back the case diary.

JUDGE

Comparing Assistant