

GAHC010128362024



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

Case No. : Bail Appln./1878/2024

BANES ALI
S/O IBRAHIM KHALIL
R/O VILL- DUTORI
P.O. KAWATIKA, P.S. BIJNI
DIST. CHIRANG, ASSAM

VERSUS

THE STATE OF ASSAM
REP BY THE PP, ASSAM

Advocate for the Petitioner : MR. A K HUSSAIN

Advocate for the Respondent : PP, ASSAM

**BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA
ORDER**

17.07.2024

Heard Mr. A. K. Hussain, learned counsel for the petitioner. Also heard Mr. P. Borthakur, learned Additional Public Prosecutor for the State respondent.

This application filed under Section 439 of the Code of Criminal Procedure, 1973, praying for grant of bail to the accused/petitioner, who has been languishing in jail since 19.04.2024 in connection with Bongaigoan GRPS Case No.45/2024 corresponding to G.R. No. 242/2024, registered under Section 21(C) NDPS Act.

The Case Diary has been received and I have perused the same.

It is submitted by Mr. Hussain, learned counsel for the petitioner, that from the FIR and the seizure list itself, it is evident that the seized quantities of the contraband were 0.334 grams and 3.08 grams respectively, which are less than the small quantity specified. However, the instant case has been registered under Section 21(C) of the NDPS Act, erroneously applying the wrong section against the petitioner. He further submitted that the contraband alleged to have been recovered was in the conscious possession of the petitioner. Additionally, the accused/petitioner was arrested on 19.04.2024 and has been in detention since then. Considering the duration of the petitioner's detention, he may be released on bail, as the investigating officer (I.O.) has had sufficient time for custodial interrogation, and the petitioner remains ready and willing to cooperate with the I.O. for further investigation of the case as needed.

In this context, Mr. Borthakur, learned Additional Public Prosecutor, has submitted that according to the FIR, the alleged quantity of contraband recovered was 0.334 grams, and from the seizure list, it is noted that from seven bars of soap contraband was recovered weighing 3.08 grams. However, based on the photograph annexed in the Case Diary, it cannot be concluded that the recovered quantity of contraband from the accused/petitioner's was less than a small quantity. Instead, the photograph suggests that the contraband may exceed a small quantity and could be as much as 6 kg, indicating a commercial nature. He further argues that there are contradictory materials in the case diary, which do not definitively establish that the recovered contraband was of a commercial nature.

Considering the submissions of learned counsels for both sides, and noting that as per the FIR and seizure list, the weight of the contraband was 0.334 grams and 3.08 grams respectively, which is significantly less than the small quantity threshold, it cannot be concluded that the contraband was of a commercial nature, despite the case being registered under Section 21(C) of the NDPS Act. Therefore, taking into account the duration of detention already undergone by the accused/petitioner, I am of the opinion that the investigating officer (I.O.) has had sufficient opportunity to interrogate the accused/petitioner while in custody. Hence, further custodial interrogation of the accused/petitioner does not appear necessary in this case.

Accordingly, it is provided that on furnishing a bond of Rs. 20,000/- (Rupees twenty thousand) only with one surety of like amount to the satisfaction of the learned Special Judge, NDPS, Bongaigaon, the accused/petitioner, namely Banes Ali, be enlarged on bail, subject to the

following conditions:

- (i) that the petitioner shall make himself available for interrogation by the Investigating Officer as and when required;
- (ii) that the petitioner shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer; and
- (iii) that the petitioner shall not leave the jurisdiction of the learned Special Judge, NDPS, Bongaigaon, without prior permission.

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

Meanwhile, the higher officials are directed to verify the discrepancies found in the FIR, seizure list, and the photograph concerning the quantity of the contraband.

JUDGE

Comparing Assistant