

GAHC010136222024



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

Case No. : Bail Appln./1981/2024

DIGANTA NEOG
S/O- BHADRESHWAR NEOG, R/O- HOUSE NO. 6, 12TH MILE, P.S. SONAPUR,
DIST.- KAMRUP (M), ASSAM

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE STANDING COUNSEL EXCISE DEPARTMENT,
ASSAM

Advocate for the Petitioner : Mr. S. Borthakur

Advocate for the Respondent : Mr. P. N. Goswami, SC, EXCISE DEPTT.

BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA

ORDER

Date : 15.07.2024

Heard Mr. S. Bothakur, learned counsel for the petitioner. Also heard Mr. P. N. Goswami, learned Additional Public Prosecutor for the State respondent.

This is an application under Section 439 of the Code of Criminal Procedure, 1973, praying for grant of bail to the accused/petitioner, who has been arrested in connection with Noonmati Excise Case No. NM/Ex. 06/2024, under Section 53(1) (a) and (d) of Assam Excise Act, 2018.

It is submitted by Mr. Borthakur, learned counsel for the petitioner, that the present accused/petitioner is innocent and is no way connected in the alleged offence and the Section under which the case is registered also does not attract against the present petitioner. He was arrested in connection with the present case on 24.06.2024 and since then, he is in custody including his 5 days police remand. The Investigating Officer, after 5 days of police remand, did not seek for further police remand of the present accused/petitioner. He is co-operating the investigation of this case and from the report of the I.O. itself, it is seen that the accused/petitioner is co-operating in the investigation of this case and he disclosed about liquor manufacturing units operating in Kokrajhar as well as in Ri-Bhoi District, Meghalaya. However, he is not the owner of those factories wherein it is alleged that the illegal liquor was prepared. He may be a supplier of the liquor, but he is not the owner of the said factory and he is co-operating the I.O. in the investigation of this case and had disclosed everything within his knowledge. Mr. Borthakur further submitted that the Investigating Officer did not comply with the provision under Section 41(A) Cr.P.C. In this context, he also relied on a decision of Apex Court reported in **2023 SCC OnLine SC 892 (Md. Asfak Alam Vs. State of Jharkhand & Anr.)**, wherein the Apex Court had expressed the view that all Courts should follow the principle laid down in the case of **Arnesh Kumar Vs. State of Bihar**. Accordingly, it is submitted by the learned counsel for the petitioner that there

was non-compliance of the guideline of the Apex Court passed in the case of **Arnesh Kumar (supra)**, wherein the direction was given to comply with the provision of Section 41 Cr.P.C. More so, he submitted that the Investigating Officer also violated the provision of Section 48 of Assam Excise Act wherein the accused or arrested person has to be produced before the concerned Magistrate within 24 hours of the arrest. He further submitted that the accused has already co-operated the I.O. in the investigation of this case and he is also ready and willing to co-operate the I.O. in the further investigation of this case if he is granted with the privilege of bail.

In this context, Mr. Goswami, learned Standing Counsel, Excise Department, submitted that the present accused /petitioner was arrested after getting the information from one Dindayal Chaubey and as lead by the present accused/petitioner, the Investigating Authority had recovered around 50,000 empty bottles, about 95,000 bottles caps, more than 50,000 fake holograms, 60,000 mono holograms caramel, Extra Neutral Alcohol, a steel tank used for blending and a machine used for fixing caps of liquor bottles etc. from Kokrajhar and again on the statement made by the present accused/petitioner, the Investigating Authority also recovered sufficient items from the another illegal liquor manufacturing unit at Ri-Bhoi District, Meghalaya. Further he submitted that from the statement made by the present arrest accused/petitioner as well as one Dindayal Chaubey, it is seen that there are other persons who are also involved in the alleged offence and are yet to be nabbed in connection with this case. Further he submitted that consumption of such illegal liquor are also dangerous for human and apart from that, they are avoiding huge revenue from the Government Department. Accordingly, he submitted that further custodial

interrogation of the present accused/petitioner may be necessary to unearth some more facts of the case and the case is also still under investigation and apart from that, some other culprits are yet to be nabbed in connection with this case.

Considering the submissions made by the learned counsels for both sides and also considering the preliminary report submitted by the I.O. as well as considering the statements available in the Case Diary etc., I find that further custodial interrogation of the present accused/petitioner may be necessary for the interest of just and proper investigation of this case and therefore, I do not find it a fit case to enlarge the accused/ petitioner on bail at this stage and accordingly the same stands rejected.

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

JUDGE

Comparing Assistant