

GAHC010177622024



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

Case No. : Bail Appln./2610/2024

MANGKHANLAL GUITE
S/O KAISAT GUITE, R/O VILL- C. LAMJANG, P.S.-KANGPOKPI, DIST-
KANGPOKPI, MANIPUR

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

Advocate for the Petitioner : MR A W AMAN, SAMIM RAHMAN, MR S A BARBHUYAN, MS
SURAYA RAHMAN, MR. SURAJIT DAS, MR SARFRAZ NAWAZ

Advocate for the Respondent : PP, ASSAM,

BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI

ORDER

Date : 20.09.2024

Heard Mr. S. Nawaz, learned counsel for the petitioner. Also heard
Mr. B. Sarma, learned Additional Public Prosecutor for the State.

2. By this bail application filed under section 483 of the Bharatiya
Nagarik Suraskha Sanhita, 2023, the accused petitioner namely,

Mangkhanlal Guite, has prayed for bail in connection with NDPS Case No. 51/2024 (arising out of Khatkhathi P.S. Case No. 17/2024) under Section 21(b)/18(b) of NDPS Act, pending in the court of learned Special Judge(NDPS), Karbi Anglong.

3. The brief facts of the case is that on 05.02.2024, during routine nakachecking, the police personnel stopped a passenger bus bearing Regd. No. AS-25-AC-0094 near SBI Branch at Khatkhathi and on being searched, 154.79 grams of heroin and 1172.42 grams of opium were recovered. Accordingly, the instant case was registered.

4. The learned counsel for the accused/petitioner submits that the petitioner has been detained in custody since 05.02.2024. The charge sheet was submitted on 31.05.2024 under Section 21(b)/18(b) of NDPS Act. It is important to note that the commercial quantity of opium, as specified in the Schedule of the NDPS Act, is 2.5 kg, and Section 18(b) of the Act relates to the punishment for such quantities. However, in the present case, the total amount of opium seized is 1172.42 grams i.e. more than 1 kg which is below the commercial quantity. Therefore, framing of charge under Section 18(b) of NDPS Act is palpably wrong. Hence, the rigors of Section 37 of NDPS Act has not come into play.

5. It is further submitted that the materials on record clearly indicate that the actual quantity of contraband involved is below the threshold of commercial quantity, placing it instead in the intermediate category. Further submission is that nothing was seized from the conscious possession of the petitioner. Although he was present on the bus from which the contraband was found but he had no knowledge of the said

contraband items. In view of the acquisition spelt out against the petitioner as well as considering the period of detention, the petitioner may be enlarged on bail.

6. On the other hand, Mr. Sarma, learned Additional Public Prosecutor has submitted that the aforesaid contraband was recovered from the possession of the petitioner. Charge was framed under Section 18(b) NDPS Act which comes under the purview of commercial quantity as such, Section 37 of NDPS Act is attracted here in this case. It is also submitted that no any witness is examined till date. Considering the fact as well as the nature of the offence, bail may not be granted to the petitioner at this stage of trial.

7. I have considered the submissions made by the learned counsel for the parties. I have also perused the scanned copy of trial court record.

8. Having heard the learned counsel for the parties, it is abundantly clear, that the applicant/accused has been found in possession of 154.79 grams of heroin and 1172.42 grams of opium on 05.02.2024 by police, which are below the commercial quantity. As mandated u/s 37 of NDPS Act, a rigor is imposed and bail to the accused in commercial quantity can only be granted, (i) when the Public Prosecutor is given an opportunity to oppose the bail, and (ii) the court is satisfied that the accused is not guilty of offence and is not likely to commit any offence on bail. As the applicant/accused in the case in hand is found in possession of "intermediate quantity" of opium weighing 1171.42 grams, therefore, rigor contained in section 37 of NDPS Act does not apply to the case in hand,

and the bail application of applicant/accused is to be governed by the provisions of Code of Criminal Procedure.

9. The settled position of law as evolved by the Supreme Court in a catena of judicial dictums on the subject governing the grant of bail is that there is no strait jacket formula or settled rules for the use of discretion but the discretion must be considered judicially. The object of bail is neither punitive nor preventative. Deprivation of liberty must be considered a punishment, unless it can be required to ensure that an accused person will stand his trial when called upon.

10. Testing at the instant application from the above perspective, it requires to be recapitulated that the rigor of Section 37 of the NDPS Act does not apply to the instant case. It also needs to be said that the case of the applicant does not fall within the parameters of the offences that are punishable with death or imprisonment of life. Therefore, there appears to be no reasonable ground for declining bail to the applicant. The maxim of the law of bail which has its application to the case on hand where the quantity of narcotics recovered from the applicant falls within the scales of an intermediary quantity, for which the punishment provided is upto 10 years and a fine of rupees one lac.

11. In view of the above, this Court is inclined to grant bail to petitioner.

12. Accordingly, the petitioner, named above, shall be released on bail in connection with NDPS Case No. 51/2024 (arising out of Khatkhathi P.S. Case No. 17/2024) under Section 21(b)/18(b) of NDPS Act, on

furnishing bail bond of **Rs.1,00,000/- with two suitable sureties each** of the like amount out of which one of the sureties should be a Government employee of Assam with minimum 5(five) years of service, to the satisfaction of learned Special Judge (NDPS), Karbi Anglong, Diphu.

13. The direction for bail is further subject to the conditions that the petitioner:

(a) shall not leave the territorial jurisdiction of learned Special Judge (NDPS), Karbi Anglong, Diphu without prior written permission from him/her;

(b) 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;

(c) shall present himself before the trial court on each and every date of hearing as fixed by the learned trial court.

14. In the view of the above, the bail application stands disposed of.

JUDGE

Comparing Assistant