

GAHC010179092024



2024:GAU-AS:10508

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

Case No. : Bail Appln./2638/2024

TANMOY GUPTA
S/O LATE RATHINDRA KR GUPTA @ LATE RATHINDRA GUPTA, R/O VILL-
CHINAIHANI, P.O.-USHA BAZAR, SINGARBIL, DIST-WEST TRIPURA,
STATE- TRIPURA, PIN CODE-799009

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

Advocate for the Petitioner : MR S RAHMAN, MS. S PHUKAN, MR S KHOUND

Advocate for the Respondent : PP, ASSAM,

BEFORE
HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

ORDER

Date : 28-10-2024

Heard learned Senior Counsel Mr. T.J. Mahanta for the petitioner and learned Additional Public Prosecutor Mr. K. Baishya for the respondent State.

2. The petitioner Tanmoy Gupta has filed this application under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 read with Section 439 of the

Code of Criminal Procedure, 1973 with prayer for bail as he is behind bars since 27.03.2023 in connection with NDPS Case No. 82/2023 pending before the Additional Sessions Judge No. 1, Kamrup (M), Guwahati in connection with Garchuk Police Station case No. 90/2023 under Sections 20(C)/29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act for short) .

3. It is submitted on behalf of the petitioner that the petitioner is behind bars for 1 (One) year 8 (Eight) months. The petitioner was not apprehended on the day contraband was recovered. Earlier this Court had rejected the bail petition with a misunderstanding that the petitioner is the owner of the truck carrying the contraband but in reality the petitioner is not the owner of the truck which was apprehended along with the contraband. The petitioner has been incarcerated on the statement of the co-accused and thus the petitioner deserves bail. The copy of the RC marked as Annexure-10 and the agreement dated 10.03.2023 marked as Annexure-11 clearly reveal that the petitioner is not the owner of the truck which was apprehended with the contraband. The RC of the truck marked as Annexure-10 TR-01-AU-1894 reveals that the owner is Dilip Kumar Saha and not the petitioner. Annexure-11 reveals that an agreement was executed between Dilip Kumar Saha and Babul Biswas that the truck was hired by Babul Biswas from Dilip Kumar Saha.

4. Learned Additional Public Prosecutor has raised serious objection that the rigour under Section 37 of the NDPS Act fetters the petitioner's bail. The petitioner is not a local resident and he is a flight risk. The petitioner is a resident of Tripura.

5. The FIR unfolds that a secret information was received by the Investigating Team that a truck bearing registration No. TR-01-AU-1894 was

proceeding from Tripura carrying huge quantity of cannabis and was approaching towards Jalukbari en route through Lokhra. The truck which was spotted by the Investigating Team was signaled to halt but the driver of the truck tried to escape, but the Investigating Team managed to intercept the truck at NH-27 near Lalung Gaon. Two occupants Babul Biswas and Haradhan Rishi Das were apprehended in the truck which was carrying cannabis weighing 76.881 Kgs. After a thorough investigation, charge sheet was laid against the occupants of truck namely Babul Biswas and Haradhan Rishi along with other accused Tanmoy Gupta, Dipankar Dey, Sajal Das and Monohar Biswas.

6. It is submitted that charge sheet was mechanically laid against the petitioner.

7. I have scrutinized the Trial Court Record and the Case Diary. Charges have been framed against the petitioner on 07.12.2023. Seizure witnesses were present before the Court on three occasions but the prosecution failed to produce the seized articles before the Court and the seizure witnesses were not examined and allowed to go on PR bond on three occasions. Trial Court Record reveals that only one PW out of five enlisted witnesses has been examined so far. Four witnesses are yet to be examined. It is true that trial has been procrastinated by the Trial Court as well as by the prosecution but at this juncture, it cannot be concluded that the petitioner's right to personal liberty has been curtailed due to prolonged incarceration. The record reveals that charges have been framed after carefully considering the statements of the witnesses and the Case Diary. The merits of this case are not brought to the fore as trial is pending.

8. Considering all aspects, at this juncture I am not inclined to grant bail to

the petitioner. Petition with prayer for bail stands rejected at this stage as the twin condition under Section 37 of the NDPS Act acts as an embargo at this juncture. Hence, petition is rejected at this stage. However, the petitioner is at liberty to subsequently apply for bail if trial is procrastinated any further by the learned trial Court as well as by the prosecution. The learned trial court as well as the prosecution is directed to expedite the trial for speedy disposal of this case.

9. In terms of the above observation, this Bail Application stands disposed of.

JUDGE

Comparing Assistant