

GAHC010180202024



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

Case No. : Bail Appln./2659/2024

MUKESH YADAV
S/O LATE YOGENDRA YADAV, EKAMAB, P.O.-EKAMBA, P.S.-CHHORAI,
DIST- BEGUSARAI, BIHAR

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

Advocate for the Petitioner : MR H R CHOUDHURY, A S PRODHAN, S. TALUKDAR

Advocate for the Respondent : PP, ASSAM,

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN
ORDER

18.09.2024

Heard Mr. H.R. Choudhury, learned counsel for the accused and Mr. K.K. Parasar, learned Additional Public Prosecutor for the respondent State of Assam.

2. This application under Section 483 of the BNSS, is preferred by the accused namely, **Sri Mukesh Yadav**, who has been languishing in jail hazot since 29.01.2023, in connection with the **Special N.D.P.S. Case No. 12/2023**, under Sections 22(c)/25/29 of the NDPS Act, arising out of Bazaricherra P.S. Case No.

20/2023, for granting bail.

3. It is to be noted here that the aforementioned case has been registered on the basis of one FIR lodged by S.I. Niranjan Das, on 29.01.2023. The essence of allegations made in the said FIR is that acting on a tip off on 29.01.2023, at about 01:30 p.m., at Naka Checking Point of Churaibari Watch Post on N.H. 08, he along with his staff intercepted one Truck, bearing registration No. AS-01-MC-0376, coming from Guwahati towards Tripura and apprehended the driver, namely, Mukesh Yadav. On checking the vehicle, he found 1280 numbers of bottles of ESKUF Cough Syrup (Codeine Phosphate) in 8 numbers of cartons, each bottle containing Codeine Phosphate and 100 ml quantity, belonging to batch No. MESL-463 and seized the same preparing seizure list in presence of witnesses.

4. Mr. Choudhury, learned counsel for the accused submits that this is the second bail application and the first one, being B.A. No. 1433/2024, was dismissed by this court, vide order dated 26.06.2024. Mr. Choudhury further submits that the accused was the driver of the said vehicle, which was given to a company, namely, Gati KWE Changsari, Guwahati, by the owner of the vehicle and placed the service of the driver at the disposal of the said company on 28.11.2022. Mr. Choudhury also submits that the accused carried the consignment by virtue of a service contract dated 28.11.2022, and that he was not aware of and also has no knowledge about the consignment of contraband substances loaded in the vehicle, as the vehicle was under lock and key. Mr. Choudhury also submits that the accused will appear before the learned trial court regularly and therefore, it is contended to allow the petition.

5. On the other hand, Mr. Parasar, learned Additional Public Prosecutor, referring to the seizure list dated 29.01.2023, submits that the contention of learned counsel for the accused that the vehicle was under lock and key and that

he was not aware of the said consignment loaded in the said vehicle, is totally false. Mr. Parasar further submits that in the seizure list, it is categorically stated that the back door of the container body truck was found unlocked and that when the cartons found therein were opened and the contraband substances were recovered and thereafter, the same were counted as well as sorted batch wise and seized in presence of independent witnesses. Mr. Parasar also submits that the contraband substances recovered from the possession of the accused are of commercial quantity and as such, the accused has to satisfy the requirement of Section 37 of the NDPS Act and unless the said requirement is satisfied with the accused cannot be granted bail and therefore, it is contended to dismiss the petition.

6. Having heard the submissions of learned counsel for both the parties, I have carefully gone through the petition as well as the documents placed on record and also perused the scanned copy of the record along with the status report received from the learned trial court.

7. It appears from the status report received from the learned trial court that after completion of the investigation, the charge sheet was submitted, being C.S. No. 93/2023, dated 30.06.2023, against the accused persons, namely, Mukesh Yadav and Santosh Kumar Mahato, who was shown as absconder in the charge sheet. Further, it appears that though the charge sheet was submitted on 30.06.2023, till date no charge has been framed against the accused and the case is pending at the stage of furnishing of copies since long. It also appears that the contraband substances recovered from the vehicle, being driven by the accused, are of commercial quantity and as such, the accused has to satisfy the twin requirements of Section 37 of the N.D.P.S. Act that he is not guilty of the offence and he will not commit any offence while on bail.

8. Though a plea is being made that the vehicle was given on lease to a company, namely, Gati KWE Changsari, Guwahati, by the owner of the vehicle on 28.11.2022, and the service of the present accused was placed in the said company and the vehicle was under lock and key at the relevant time and the accused was not aware of the said consignment loaded in the vehicle, yet said plea is found to be far from satisfactory, in view of the fact stated in the seizure list dated 29.01.2023, indicates that the back door of the container truck was found in unlocked condition. That being the position, the submission of Mr. Choudhury, learned counsel for the accused, cannot be accepted. Also in view of the materials on record and from the submission of Mr. Choudhury, this court is unable to derive its satisfaction that the accused is not guilty of the offence and that he will not commit any offence while on bail.

9. No doubt, there appears to be some lapses on the part of the learned trial court, as copies are yet to be furnished and the next date is fixed on 06.11.2024. But, the delay that happened here in this case, to the considered opinion of this court, cannot be counted as inordinate delay so as to impair the right to speedy trial of the accused. At best, it can be termed as systemic delay.

10. Under the aforementioned facts and circumstances, this court is of the view that this is not a fit case where the privilege of bail can be granted to the accused.

11. Accordingly, the petition stands **dismissed**.

JUDGE

Comparing Assistant