

GAHC010199162024



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

Case No. : Bail Appln./2882/2024

MAHANTA BRAHMA
S/O- LATE KRISHNA BRAHMA,
R/O- VILLAGE- DAODHARA,
P.O- KHAMARDWISA,
P.S- SIMLA, DIST- BAKSA,
ASSAM, PIN-781330

VERSUS

THE STATE OF ASSAM
REP BY THE PP ASSAM

Advocate for the Petitioner : MR. JAGANNATH HATIMURIA, MR. N M DAS, MR. M KALITA

Advocate for the Respondent : PP, ASSAM,

BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI

ORDER

Date : 23.09.2024

Heard Mr. M. Kalita, learned counsel for the petitioner. Also heard Mr. D.P. Goswami, learned Additional Public Prosecutor for the State.

2. By this application filed under section 483 of the Bharatiya Nagarik

Suraskha Sanhita, 2023, the accused petitioner namely, **Mahanta Brahma**, has prayed for bail in connection with **Simla P.S. Case No. 68/2024 under Section 53(1)(A)/54 of Assam Excise Act.**

3. It has been submitted by the learned counsel for the petitioner that the petitioner has been detained in custody since his arrest on 17.09.2024. It is also submitted that one Ugyen Tshewang, citizen of Bhutan is reported to have brought the vehicle being registration number BP-3-A-1674, from which a large quantity of Bhutanese liquor was recovered at the house premises of Mijing Brahma. The petitioner was arrested in connection with this case. According to the learned counsel for the petitioner, a notice under Section 41(A) Cr.P.C. is mandatory. However, no such notice was issued to the petitioner. Considering the background of the case, the petitioner may be enlarged on bail.

Learned counsel has referred the case of *Satender Kumar Antil v. Central Bureau of Investigation & Anr.*, reported in (2022) 10 SCC 51.

4. Mr. Goswami, learned Additional Public Prosecutor for the State has produced the case diary and submits that there is no reflection in the case diary that notice under Section 41(A) Cr.P.C. was issued against the petitioner. It is also submitted that the petitioner is engaged in illegal smuggling of Bhutanese liquor from Bhutan to India. Hence, he has objection in granting bail to the petitioner.

5. I have considered the submissions made by the learned counsel for the parties. I have also perused the case diary.

6. In the case of *Santender Kumar Antil* (supra), the Hon'ble Supreme Court held that-

“b) The investigating agencies and their officers are duty-bound to comply with the mandate of Section 41 and 41 A of the Code and the directions issued by this Court in Arnes Kumar (supra). Any dereliction on their part has to be brought to the notice of the higher authorities by the court followed by appropriate action.

c) The courts will have to satisfy themselves on the compliance of Section 41 and 41A of the Code. Any non-compliance would entitle the accused for grant of bail.

7. In the light of the allegations in the FIR, the maximum punishment being three years for the offence under Section 53(1)(A)/54 of Excise Act, it is essential that a notice under Section 41(A) Cr.P.C. be served to the petitioner. Both the learned counsel for the petitioner and the Additional Public Prosecutor have confirmed that no such notice has been issued to the petitioner. Therefore, considering the background of the case this Court is inclined to grant bail to the petitioner.

8. Accordingly, the petitioner, named above, shall be released on bail in connection with **Simla P.S. Case No. 68/2024 under Section 53(1)(A)/54 of Assam Excise Act**, on furnishing bail bond of **Rs.50,000/- with one suitable surety** of the like amount to the satisfaction of learned CJM, Baksa, Mushalpur, Assam.

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

(a) shall not leave the territorial jurisdiction of learned CJM, Baksa,

Mushalpur, Assam 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 not hamper with the investigation, or tamper with the evidence of the case.

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

11. Send back the case diary.

JUDGE

Comparing Assistant