

GAHC010203602024



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

Case No. : Bail Appln./3006/2024

SUNTU TIWARI
S/O LATE RAMA KANT TIWARI, R/O VILLAGE BATHGAON, P.S. NTPC,
DISTRICT PATNA, BIHAR, PIN 803215

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

Advocate for the Petitioner : MR. A PAUL, MR. J PAUL

Advocate for the Respondent : PP, ASSAM,

BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI

ORDER

Date : 12.11.2024

Heard Mr. A. Paul, learned counsel for the petitioner. Also heard Mr. D.P. Goswami, learned Additional Public Prosecutor for the state.

2. By filing this application u/s 483 BNSS, 2023, the petitioner namely Suntu Tiwari has prayed for regular bail in connection with NDPS Case No. 26/2022

u/s 20(b)(ii)(C)/ 29 of NDPS Act pending in the court of Special Judge Kamrup, Rangia.

3. The case of the petitioner is that the accused/ petitioner was arrested on 01/08/2022 vide GRPS, Rangia along with two other accused persons on the strength of a written FIR dated 31/07/2022 alleging *inter alia* that the petitioner was found in possession of ten packets of ganja weighing 30.75 Kg at platform no. 1 from a train bearing No. 15626 Daoghar weekly express travelling from Agartala to Daoghar. Accordingly, a case was registered vide Rangia GRPS case No. 27/2022 and the recovered items were seized.

4. Learned counsel for the petitioner has submitted that the petitioner is no way involved with the alleged offence and he has been falsely implicated in the instant case merely on the basis of suspicion. Furthermore, the contrabands were not seized in terms of Section 50 of the NDPS Act and the possession of the contrabands are completely doubtful.

5. It is further submitted that the prosecution case is totally false because no tickets from the accused/ petitioner was seized allegedly travelling in Daoghar weekly express. The learned counsel for the petitioner has further pointed out that around 9.25 kgs of alleged ganja were seized from the possession of the present petitioner, which does not come within the category of commercial quantity under the NDPS Act. Therefore, there is no embargo u/s 37 of NDPS Act for releasing the accused on bail.

6. Further submission of the learned counsel for the petitioner is that one of the accused was found to be juvenile during the investigation of the case and the other co-accused Deepak Kumar was granted bail before the

commencement of trial in the year 2022 considering the quantity of seized substance. Therefore, the present petitioner is also entitled for bail in consideration of quantity of alleged contraband.

7. According to learned counsel for the petitioner, the petitioner has been languishing in judicial custody for more than two years. Out of nine witnesses, seven witnesses have been examined before the trial court. Due to his long detention, the petitioner is unable to make proper communication to his engaged counsel related to his case for which he has deprived to avail a fair trial. Hence, the learned counsel prays to release the accused/ petitioner on bail.

8. Per contra, the learned Additional Public Prosecutor has submitted that around more than 30 kgs of ganja were recovered from the possession of the petitioner and two others and they jointly carried the said ganja from Agartala to Patna for selling. It is further submitted that out of ten witnesses, eight witnesses have already been examined. Hence, learned Additional Public Prosecutor has opposed in granting bail to the petitioner at this fag end of trial.

9. Having heard the learned counsel for the parties, the admitted fact is that this is the second bail application filed by the petitioner. The earlier bail application was rejected by this court on 30/05/2024. It is also reflected from said order that eight witnesses were examined by the prosecution earlier on 30.05.2024. Though, the trial court was directed to take such initiative to dispose of the matter early, however, for last six months no witness is examined before the trial court. It is also not in dispute that the petitioner has been detained in custody for more than two years. There is no reflection in the order sheet why the prosecution has failed to examine two witnesses for last

six months. As it appears from the record that other accused Deepak Kumar was granted bail during investigation of the case in the year 2022.

10. In the case of ***Nitish Adhikari @ Bapan vs. State of West Bengal***, reported in ***Special Leave to Appeal (Criminal) 5769/2022***, Hon'ble Supreme court held that –

“.....During the course of the hearing, we are informed that the petitioner has undergone custody for a period of one year and seven months as on 09/06/2022. The petitioner does not have any criminal antecedents. Taking into consideration the period of sentence undergone by the petitioner and all the attending circumstances but without expressing any views in the merits of the case, we are inclined to grant bail to the petitioner...”

11. In another case ***Mohammad Salman Hanif Sheikh vs. the State of Gujarat***, vide ***Special Leave to Appeal in (Criminal) No. 5530/2022***, it was held by the Hon'ble Supreme Court that -

“.....We are inclined to release the petitioner on bail only on the ground that he has spent about two years in custody and conclusion of trial will take some time.....”

12. In view of the above, without expressing any views on the merits of the case and taking into consideration the custody period of the petitioner, this court is inclined to grant bail to the petitioner. Accordingly, the petitioner shall be released on bail on furnishing bail bond of Rs.2,00,000/- (Rupees Two Lakh) only, with two suitable sureties of the like amount out of which one of the sureties must be of Government employee of the State of Assam, to the

satisfaction of learned Special Judge, Rangia subject to the following terms and conditions:-

(i) that the applicant/accused shall present himself before the trial Court on each and every date of hearing except for special circumstances beyond his control;

(ii) Shall not leave the territorial jurisdiction of the trial court without his/her written permission.

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

JUDGE

Comparing Assistant