

GAHC010212792024



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

Case No. : Bail Appln./3141/2024

BUTAN AICH
S/O LT. DULAL AICH
R/O NARSINGPUR
P.S. AIRPORT WEST TRIPURA,
DIST. WEST TRIPURA, TRIPURA.

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE LEARNED PP, GOVT. OF ASSAM

Advocate for the Petitioner : S AHMED, MR M RAHMAN,MS A HUSSAIN

Advocate for the Respondent : PP, ASSAM,

BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI

ORDER

Date : 05.11.2024

Heard Mr. S.Ahmed, learned counsel for the petitioner and Mr. D.Das, learned Addl. P.P., Assam for the State respondent.

By filing this petition under Section 483 of the Bharatiya Nagarik Surakshya Sanhita, 2023 the accused-petitioner, namely, **Butan Aich** has prayed for grant

of bail in connection with **Special NDPS Case No. 53(H)/2024** (Lanka P.S. Case No.554/2023) under Section 21 (c)/29 of NDPS Act pending in the court of learned Special Judge, Hojai.

The allegation in the FIR dated 21.11.2022 reveals that during a Naka checking at the naka check point of Churiabari, the informant and his staff recovered and seized 410 kgs of suspected ganja from a secret chamber of the truck bearing Registration No. HR 55P 6819.

The learned counsel for the petitioner submits that the petitioner has been languishing in judicial custody for last 321 days since his arrest on 21.12.2023. He was arrested from Mayur Hotel, Guwahati along with his vehicle. It is further submitted that nine witnesses have already been examined but none of the witnesses have implicated the petitioner to be involved in the alleged offence. Considering the length of detention, petitioner may be enlarged on bail.

The learned Addl.P.P., on the other hand, submits that out of sixteen witnesses, nine witnesses have already been examined. It transpires that trial has been progressed substantially. It is further submitted that the petitioner belongs to the State of Tripura and if bail is granted at this stage of trial, there is every possibility of his non-appearance during rest of the trial. Hence, Addl.P.P. has raised objection in granting bail to the petitioner.

I have heard the learned counsel for the parties and perused the scanned copy of the trial court records. It appears that commercial quantity of ganja was recovered but it is not specifically stated in the seizure list that the said ganja was recovered from the conscious possession of the petitioner. From the record and the case diary, it also reveals that there is involvement of the petitioner. Out of sixteen witnesses, nine witnesses have already been examined in the case.

Apparently, there is no delay in proceeding of the case.

The NDPS Act is a special Act with an inbuilt mechanism in the form of Section 37 relating to bail.

The Hon'ble Supreme Court in the case of ***Chandrakeshwar Prasad Vs. State of Bihar***, reported in ***(2016) 9 SCC 443***, has laid down in clear terms that interest of the society is a relevant factor to be taken into account while considering the prayer for bail. For ready reference, the relevant paragraphs of the said case are extracted herein below:

"10. This Court in Rajesh Ranjan Yadav @ Pappu Yadav v. CBI through its Director (2007) 1 SCC 70 balanced the fundamental right to individual liberty with the interest of the society in the following terms in paragraph 16 thereof:

"We are of the opinion that while it is true that Article 21 is of great importance because it enshrines the fundamental right to individual liberty, but at the same time a balance has to be struck between the right to individual liberty and the interest of society. No right can be absolute, and reasonable restrictions can be placed on them. While it is true that one of the considerations in deciding whether to grant bail to an accused or not is whether he has been in jail for a long time, the court has also to take into consideration other facts and circumstances, such as the interest of the society."

On consideration of the matter in its entirety, this Court is not inclined to grant bail to the accused/petitioner, at this stage. Therefore, prayer for bail is rejected. However, trial court is directed to expedite the trial, to dispose of the matter early.

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

JUDGE

Comparing Assistant