

GAHC010218062024



2024:GAU-AS:12258

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

Case No. : Bail Appln./3207/2024

MITHUN KUMAR SAHANI
S/O.- BANARASHI SAHANI, R/O- NAWADA GOVINGANJ, DIST. EAST
CHAMPARAN, BIHAR, PIN- 845411.

VERSUS

THE UNION OF INDIA
REPRESENTED BY THE STANDING COUNSEL, CUSTOM (PREV.) DIVISION.

Advocate for the Petitioner : MS. R S SADIAL, MR. M R SODIAL

Advocate for the Respondent : SC, CUSTOMS, MR. S C KEYAL

BEFORE
HONOURABLE MR. JUSTICE MANASH RANJAN PATHAK

ORDER

04.12.2024

Heard Mr. M R Sodial, learned counsel for the petitioner and Mr. S C Keyal, learned Special Public Prosecutor, Customs Department for the respondent.

2) By this application filed under Section 483 BNSS, 2023, the petitioner, namely, **Mithun Kumar Sahani**, son of Banarashi Sahani, resident of Nawada Govindganj, District-East Champaran, Bihar has prayed for his bail **in Special (NDPS) Case No. 132/2023** arising out of Custom's Departmental Case No. 01/CL/NDPS/AS/KXJ/2023-24

dated-05.10.2023, in which, he was arrested on 05.10.2023 and is in custody since then.

3) Matter relates to recovery of 20,000 Nos. of Phensedyl Cough Linctus bottles in 200 cartoons, each bottle containing 100 ml, from a Tata LPT truck bearing Registration No. NL-01G-6201 in 100 sacks, each sack containing two cartoons and each cartoon containing 100 Nos. of bottles. Said recovery was made from the Tata LPT truck bearing Registration No. NL-01G-6201 between Assam-Agartala road at Cheragi Bazar, Karimganj, in which, the petitioner was its helper. Said 20,000 Nos. of Phensedyl cough Linctus bottles were duly seized from the said truck by the Police. The petitioner was arrested on 05.10.2023 and since then, he is in custody. Hence, this bail application by the petitioner.

4) The contention of the petitioner herein is that the prosecution did not follow the provision of Section 52A of the NDPS Act while seizing the alleged NDPS items from the truck concerned and also that the inventory was not made by following the provision of Section 57 of the NDPS Act. Further, it is also urged before the Court by the petitioner that considering his detention since 05.10.2023, he should be released on bail in said Special (NDPS) Case No. 132/2023.

5) Mr. S C Keyal, learned Special Public Prosecutor, Customs Department, by placing the copy of the charge sheet filed in said Special (NDPS) Case No. 132/2023 annexed to this bail application as Annexure-6, particularly para-10 and para-11 of the said charge-sheet, submitted before the Court that the prosecution followed all the provisions of the NDPS Act, 1985 as amended, including the provisions under Sections 52 and 57 of the said Act.

6) It is stated by Mr. Keyal that the alleged NDPS materials that were recovered from the said truck were duly made and its inventory was also made by following the due procedure, as per the order of the learned Chief Judicial Magistrate, Karimganj.

7) It is seen from the records of the case that after the seizure of 20,000 Nos. of bottles of alleged NDPS items, sample were duly drawn and forwarded to the FSL for its report and the FSL report dated 03.11.2023 indicated that the bottles seized in the case contain Codeine, a scheduled NDPS item.

8) It is also seen from the records of the case that after filing of the charge sheet in the case on 28.03.2024, the learned Special Judge (NDPS), Karimganj on 05.07.2024, in said

Special NDPS Case No. 132/2023 arising out of Custom's Departmental Case No. 01/CL/NDPS/AS/KXJ/2023-24 dated-05.10.2023, has framed charges under Section 22(c)/25/29 of the NDPS Act, 1985 against the petitioner and the other arrested accused person of the case, namely, Jaylal Sahani.

9) It is also seen from the records of the case that the matter is now fixed for recording of evidence of prosecution witnesses and that the next date of the case is fixed on 09.01.2025.

10) For the reasons above and finding sufficient incriminating materials against the petitioner in the case records and considering the recovery of 20,000 Nos. of Phensedyl cough linctus bottles containing Codeine, a scheduled NDPS item that were carried in the Truck seized in the case concealed in 155 Nos. of bags of Rice Dust concealed in the middle of the said Truck surrounded by bags of Rice Dust, thereby found to be involved in illegal-possession, transportation and concealment of Narcotic Drugs, the Court is of the view that the custodial detention of the petitioner, namely, **Mithun Kumar Sahani**, since 05.10.2023, cannot be considered for his bail in said Special (NDPS) Case No. 132/2023.

11) Accordingly, this bail application of the petitioner, namely, **Mithun Kumar Sahani**, in the Special (NDPS) Case No. 132/2023 pending before the Court of the learned Special Judge (NDPS), Karimganj stands rejected.

12) Return the case diary herewith.

JUDGE

Comparing Assistant