

GAHC010224072023



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

Case No. : Bail Appln./3785/2023

RANJIT BAISHYA
S/O LATE UDAY BAISHYA
R/O DOULASHAL, P.S. MUKALMUAH
DIST. NALBARI, ASSAM

VERSUS

THE STATE OF ASSAM
TO BE REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. M A CHOUDHURY

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

Date : 11.01.2024

1) Heard Mr. M. A. Chaudhury, learned counsel for the petitioners. Also heard Mr. K.K. Parasar, learned Additional Public Prosecutor for the State respondent.

2) This application under section 439 of the Code of Criminal Procedure,

1973 has been filed by the petitioner, namely, Ranjit Baishya who is detained behind the bars since 03.04.2023 in connection with Bazaricherra P. S. Case No.76/2023 under section 22(C)/25/29 corresponding to Special (NDPS) Case No. 33/2023 pending before the Court of learned Special Judge, Karimganj.

3) The gist of accusation in this case is that on 03.04.2023 one Niranjana Das, S. I. Police, lodged an FIR before the Officer-In-Charge of Bazaricherra Police Station, *inter-alia*, alleging that as per the routine Naka checking duty at Churaibari Watch Post at National Highway No. 8, one six wheeler Tata vehicle bearing registration number AS 01 MC 0387 was intercepted which was coming from Guwahati side and proceeding towards Tripura.

4) The present petitioner, i.e. Ranjit Baishya, was the driver of the said truck and was accompanied by another person, namely Shri Dingsan K. Sangma. During the checking it was found that the body of the truck was locked with orange color bolt seal lock of GATIKWE bearing lock No. 262666191. The bolt sealed lock was broken to open the container body of the truck and after breaking the seal of the lock, the container was checked and during checking 10 numbers of packets containing codeine phosphate phensedyl cough syrup were found inside the said truck, the said 10 numbers of bags contained 2000 numbers of bottles of codeine phosphate phensedyl cough syrup with each bottle containing 100 ml quantity of cough syrup.

5) Learned counsel for the petitioner has submitted that the petitioner is only the driver of the said vehicle which was a container truck of GATIKWE courier company and the container of the said truck was bolt with sealed lock, which can be opened only through an authorized person and the driver i.e., the petitioner, was unaware of the content of the container, and he was not authorized to either lock or to open the container.

6) Learned counsel for the petitioner has also submitted that the seized vehicle has already been given in zimma to the owner of the vehicle on the ground that the owner of the vehicle had entered into an agreement with GATI Kintetsu Express Pvt. Limited for a period of three years, and the owner was not aware of the fact as to what are the contents of the container.

7) Learned counsel for the petitioner has also submitted that as the container was sealed with bolt seal lock of GATIKWE Courier company and the same can be opened only by those authorized persons of the said courier company and there is nothing on record to suggest that the present petitioner, who was only a driver of the said company and whose duty was only to carry the loaded goods from loading point to its destination point was aware of the contents of the said truck, he may not be regarded as having conscious possession of the contents of the said truck.

8) On the other hand, learned Additional Public Prosecutor has opposed the grant of bail to the present petitioner and has produced the case diary of Bazaricherra P. S. Case No.76/2023 and has submitted that the said truck was carrying commercial quantity of contraband and hence the embargo of Section 37 comes into play and on that ground he opposed the grant of bail to the present petitioner.

9) I have considered the submissions made by learned counsel for both sides, and have gone through the materials of the case on record including the case diary of Bazaricherra P. S. Case No.76/2023.

10) It appears from the materials on record i.e., the case diary which is available before this Court that the vehicle from which the contraband was recovered was found under bolt seal lock of GATIKWE Courier Company and it also appears that there is nothing to show that the said bolt seal lock was

tampered or was opened before being searched by the Seizing Officer.

11) Further, it also appears that the said bolt seal lock could be opened only by the authorized person at the destination point and the driver of the vehicle i.e., the present petitioner was not authorized to open the said lock, and there is no material on record in the case diary to suggest that the petitioner was aware of the contents of the vehicle container and therefore, it may not be said that the present petitioner was in the conscious possession of the contraband recovered from the truck which he was driving.

12) Considering the above facts, this Court is of the considered opinion that the embargo of section 37 of the NDPS Act is not applicable in this case, as there is reasonable ground to believe that the petitioner may not be guilty of the conscious possession of commercial quantity of contraband in this case.

13) Further, as there is no material to show that the petitioner has a previous antecedent of being involved in similar offences earlier, there is no material to come to the conclusion that if released on bail, the petitioner would indulge in committing similar offenses again.

14) Therefore, this Court is of the considered opinion that further custodial detention of the present petitioner is not justified. It is, however, made clear that the observations made herein above are only limited for the purpose of consideration of the instant bail application.

15) In view of above, it is hereby directed that the petitioner, namely, Ranjit Baishya, is allowed to go on bail of Rs. 30,000/- (Rupees Thirty Thousand only) with one surety of like amount subject to the satisfaction of the Special Judge Karimganj with the following conditions:

i. That the petitioner shall appear and cooperate in the trial pending against him before the trial court.

ii. That the petitioner shall not directly or indirectly make any inducement, threat, or promise to any person who may be acquainted with the facts of the case, so as to dissuade such person from disclosing such facts before the Trial Court

iii. The trial court may impose any additional condition if it deems fit to do so while accepting bail bonds from the petitioner.

16) With the above observation, this bail application is accordingly disposed of.

17) Send back the case diary.

JUDGE

Comparing Assistant