

GAHC010227812024



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

Case No. : Bail Appln./3338/2024

ANIL PEGU
S/O SRI MUNTAN PEGU,
R/O VILL- DHUNAGURI MISSING GAON,
P.S.-BIHPURIA, PIN-784161,
DIST- LAKHIMPUR, ASSAM

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

Advocate for the Petitioner : MS D BORGOHAIN, MS M BORAH, MS. K BORUAH, MS. M SARMAH, MR. P GOHAIN

Advocate for the Respondent : PP, ASSAM,

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN

ORDER

Date : 29-11-2024

Heard Ms. D. Borgohain, learned counsel for the accused and also heard Mr. M.P. Goswami, learned Additional Public Prosecutor for the State respondent.

2. This application, under Section under Section 483 of Bharatiya Nagarik

Surakshya Sanhita, 2023 is preferred by accused, namely, **Sri Anil Pegu**, who has been languishing in jail hazot in connection with the Special (NDPS) Case No.28/2024, arising out of **Bihpuria P.S. Case No. 204/2023**, under Section 20(b)(ii)(c) of the NDPS Act, pending before the Court of learned Special Judge, Lakhimpur, for grant of bail.

3. The above noted case has been registered on the basis of an FIR lodged by SI Gaurav Kumar Bhumij, on 21.11.2023.

4. The essence of allegations, made in the FIR is that acting on a tip off, on 20.11.2023, at about 09.45 pm, they have apprehended accused Anil Pegu at Adhaguri No.1 Forest Camp, of Pabha Forest Reserve and recovered 20.756 kg of Ganja in two packets covered by a transparent plastic tap, from his possession and seized the same along with a motorcycle in presence of witnesses.

5. Ms. Borgohain, learned counsel for the accused submits that the accused was arrested on 20.11.2023, and since then he has been languishing in jail hazot for more than a year. Ms. Borgohain, further submits that while conducting search of the accused, the mandatory provision of Section 50 NDPS Act has not been complied with and this will vitiate the entire trial. Ms. Borgohain, also submits that the prosecution side had already examined 7 witnesses and from perusal of the evidence also, it cannot be said about compliance of said section. Therefore, Ms. Borgohain has contended to allow this petition.

6. Per contra, Mr. Goswami, learned Additional Public Prosecutor submits that section 50 is required to be complied with in respect of personal search. In the case in hand, 20 Kg of Ganja, which is of commercial quantity, found in two

packets while the same were being carried in the Motor Cycle and as such non compliance of Section 50 of NDPS would be of no consequence. In support of his submission Mr. Gowsami has referred to the decision of **Madan Lal v. State of H.P.**, reported in **(2003) 7 SCC 465**, wherein Hon'ble Supreme Court has held as under:-

16. A bare reading of Section 50 shows that it only applies in case of personal search of a person. It does not extend to search of a vehicle or a container or a bag or premises. (See *Kalema Tumba v. State of Maharashtra* (1999) 8 SCC 257, *State of Punjab v. Baldev Singh* [(1999) 6 SCC 172 : and *Gurbax Singh v. State of Haryana* [(2001) 3 SCC 28 : 2001 SCC (Cri) 426].) The language of Section 50 is implicitly clear that the search has to be in relation to a person as contrasted to search of premises, vehicles or articles. This position was settled beyond doubt by the Constitution Bench in *Baldev Singh case* (1999) 6 SCC 172. Above being the position, the contention regarding non-compliance with Section 50 of the Act is also without any substance.

6.1 Further contention of Mr. Goswami is that the quantity of contraband substance recovered from the possession of the co- accused is of commercial quantity and as such, there is a requirement of satisfying twin condition of Section 37 of the NDPS Act and the accused has failed to satisfy the aforesaid requirement. Further, Mr. Goswami submits that the trial is at the fag end and at this stage, if the accused is enlarged on bail, then there will be delay in completion of trial and therefore, it is contended to dismiss the petition.

7. Having heard the submission of learned counsel for both the parties, I have

carefully gone through the petition as well as the documents placed on record and also perused the case diary with the assistance of learned Additional Public Prosecutor, and the decision referred by him.

8. And I find substance in the submission of Mr. Goswami, the learned Addl. P.P. It appears from the record of the learned Trial Court that 20 Kg of Ganja, which is of commercial quantity, found in two packets, while the same were being carried by the accused with one Motor Cycle were seized here in this case. That being the position, the contention of the learned counsel for the accused that non-compliance of the provision of Section 50 of the Act is without any substance. It is no body's case that the Ganjas were recovered from personal search of the accused Anil Pegu. The ration laid in the case of **Madan Lal(supra)** also thus, strengthened the submission of Mr. Goswami.

9. Besides, the quantity of Ganja, so recovered from the possession of the accused are of commercial quantity. And as such he has to satisfy the requirement of the Section 37 of the NDPS Act. However, from the materials placed on record and also from the submission of learned counsel for the accused, this Court is unable to derive its satisfaction that the accused is not guilty of the offence and that he will not commit similar offence while on bail.

10. Further, it appears that the trial is at the fag end. Almost all the witnesses have been examined. There is no considerable delay in trial so as to impair the right to speedy trial of the accused.

11. Having regards to above and also considering the nature and gravity of the offence, this Court is of the view that this is not a fit case where the privilege of bail can be extended to the accused.

12. Accordingly, the petition stands dismissed.

JUDGE

Comparing Assistant