

GAHC010249112023



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

Case No. : Bail Appln./4006/2023

DIPANKAR DEY
S/O MEHIR DEY
R/O VILL- FULKUMARI UDAYPUR, GOMATI, TRIPURA
P.S. R.K. PUR (RADHA KISHOR PUR) DIST. GOMATI TRIPURA, TRIPURA

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. U K BARMAN

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN
ORDER

29.01.2024

Heard Mr. H. Ali, learned counsel for the accused and Mr. R.J. Barua, learned Additional Public Prosecutor for the State respondent.

2. This application under Section 439 of the Code of Criminal Procedure, 1973, is preferred by accused namely, **Dipankar Dey**, who has been languishing in jail hazot, in connection with the **NDPS Case No. 82/2023**, under Sections 20[b][ii] [C]/29 of the NDPS Act, arising out of Garchuk PS Case No. 90/2023, pending before the learned Addl. Sessions Judge, No. 1, Kamrup [M] at Guwahati, for granting bail.

3. The said case has been registered on the basis of one FIR lodged by SI Pulokesh Kaman, on 26.03.2023. The essence of allegations made in the FIR is that acting on a tip off, he along with his staff intercepted one Truck, bearing registration No. TR-01-AU-1894, at Lalung Gaon near Bharat Petrol Pump, Guwahati and apprehended 2 persons namely, Babul Biswas and Haradhan Rishi Das and recovered 76.881 kgs of Ganja from the vehicle.

4. Mr. Ali, learned counsel for the accused submits that on the basis of the statement of the co-accused namely, Babul Biswas and Haradhan Rishi Das, the IO has arrested one Tanmoy Gupta, the alleged owner of the Truck and the contraband substance. Mr. Ali further submits that the present accused was arrested while he was travelling with Tanmoy Gupta in the vehicle, bearing registration No. TR-01-BU-0386 and that nothing has been recovered from the possession of the present accused and that the co-accused namely, Babul Biswas and Haradhan Rishi Das has not implicated the present accused also and that he is no way involved with the offence alleged in the FIR. Mr. Ali also submits that the Standing Order, bearing No. E/NL.1989/18-19, which deals with general procedure for sampling, storage, etc. as provided under Section 52[A] of the NDPS Act, has not been followed by the IO while drawing sample from the contraband substance, as required by point No. 2.3 of the said Standing Order one of 1989. Mr. Ali also submits that no compliance of the aforesaid provision let to drawing an adverse inference against the investigating authority, in view of the judgment of Hon'ble Supreme Court in the case of **Noor Aga vs. The State of Punjab and Anr.**, reported in **[2008] 16 SCC 417** and on such count, the accused is entitled to bail.

5. On the other hand, Mr. Barua, learned Additional Public Prosecutor fairly submits that neither the co-accused have implicated the present accused nor any contraband substance has been recovered from the possession of the present accused and that he was arrested while he was travelling with Tanmoy Gupta, the alleged

owner of the Truck, bearing registration No. TR-01-AU-1894, and the contraband substance. Mr. Barua further submits that the standing order, bearing No. E/NL.1989/18-19, has to mandatorily complied with, in view of the judgment of Hon'ble Supreme Court in the case of **Noor Aga [Supra]**.

6. Having heard the submissions of learned Advocates of both sides, I have carefully gone through the petition as well as the documents placed on record and also perused the case diary along with the scanned copy of the record received from the learned court below.

7. It is not in dispute that nothing has been recovered from the possession of the present accused and he was arrested while he was travelling with Tanmoy Gupta, the alleged owner of the Truck, bearing registration No. TR-01-AU-1894, and the contraband substance. Further, it appears that the co-accused persons also have not implicated the present accused with the offence alleged in the FIR.

8. It is a fact that when commercial quantity of contraband substance is involved, the accused has to satisfy the twin requirements of the Section 37 of the NDPS Act, that he is not guilty of the offence and that he will not commit similar offence while on bail and here in this case from the materials available on the record and from the submissions of learned counsel for both the parties, this Court is satisfied to hold that the materials placed on record appears to be inadequate to disclose any legally prosecutable culpability, against the present accused and as such the embargo under Section 37 of the NDPS Act will not come into play here in this case.

9. Further, it appears that the direction in the Standing Order, bearing No. E/NL.1989/18-19, has not been complied with here in this case, while drawing sample and in view of the decision of the Hon'ble Supreme Court in the case of **Noor Aga [Supra]**, the same have to be mandatorily complied with.

10. In view of the aforesaid facts and circumstances on the record and also in view of the materials available in the case diary and also in the record received from the learned court below, this Court is of the view that a prima-facie case has been made out for granting bail to the present accused.

11. Accordingly, it is provided that on furnishing a bond of Rs. 50,000/- each only, with one surety of like amount to the satisfaction of the learned **Additional Sessions Judge, No. 1, Kamrup [M] at Guwahati**, the accused persons be enlarged on bail.

12 In terms of above, this bail application stands disposed of.

Comparing Assistant

JUDGE