

GAHC010262462023



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

Case No. : Bail Appln./4257/2023

LITAN SARKAR
S/O LATE SUNIL SARKAR
R/O HOSPITAL ROAD,
SONAMURA
P.O. AND P.S. SONAMURA
DIST. SEPAHIJALA, TRIPURA,
PIN-799102

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR SISHIR DUTTA

Advocate for the Respondent : PP, ASSAM

BEFORE

HON'BLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

ORDER

19.01.2024

Heard Mr S Dutta, learned counsel for the petitioner, Litan Sarkar.

2. The petitioner has filed this application under Section 439 CrPC, with prayer for bail, as he is behind bars since 17.06.2022, in connection with Special (NDPS) Case No.

96 of 2022, arising out of Bazaricherra PS Case No. 114/2022, registered under Sections 20(b)(ii)C/22(B)/25/29 of the NDPS Act.

3. Heard Mr M P Goswami, learned Additional Public Prosecutor for the State of Assam.

4. It is submitted on behalf of the petitioner that he was the driver of the tipper bearing Registration No. NL-01AD-2314. It is submitted that the petitioner being a driver of the tipper was not aware about the three secret chambers referred in the FIR. He being a driver and an employee was driving the vehicle and was not privy to any secret chamber constructed in the vehicle for transporting narcotics and contraband.

5. The learned Additional Public Prosecutor has raised serious objection stating that the petitioner was caught red-handed and it cannot be said that he was not in conscious possession, because 482 kgs of ganja was seized in connection with this case, along with 8 bottles of cough syrup (codeine), which reveals that different varieties of contraband were being transported through the vehicle, which depicts that the petitioner was a drug peddler.

6. I have considered the submissions at the Bar with circumspection.

7. It is submitted that the petitioner has been behind bars for 578 days.

8. It is also submitted by the learned Additional Public Prosecutor that the co-accused could not be arrested and it is not because of the conduct of the prosecution that trial has been procrastinated. The trial could not proceed as co-accused are yet to be arrested.

9. It is also submitted that the petitioner's personal liberty has been infringed as the petitioner is behind bars without any trial. Charges have not been framed and not a single witness has been examined. This militates against the rigours of Section 37 of the NDPS Act.

10. The petitioner has relied on the decision of this Court in ***Lorik Ram –Vs- State of Assam***; reported in **2022 SCC OnLine Gau 975**, wherein it has been observed that-

“2. By this petition under Section 439 Cr.P.C., the accused-petitioner, namely Lorik Ram has prayed for grant of bail in connection with Bazaricherra P.S. Case No. 41/2022 u/s 22(C)/25/29 of the N.D.P.S. Act, 1985.

8. A perusal of the case diary, it is revealed that 10 cartons containing 3000 bottles of Phensedyl Cough Syrup were recovered and seized from the truck bearing registration No. AS 01 NC 3916 driven by the accused petitioner. The F.S.L. report shows that sample of Phensedyl Cough Syrup gave positive tests for Codeine (present as Codeine Phosphate) and contained 186.5 ml. per bottle. It further transpires that the accused petitioner is the driver of truck of VRL Logistics and it is his duty to deliver the consignments of various goods loaded by the said company to the consignee as per challan. After thorough investigation, the investigating officer in his note, dated 07.03.2022, noted that the seized cartons bore seal and pack of VRL Logistic Company and loaded for transportation by the company truck driven by the accused petitioner for delivery. It has been further noted that ‘narcotic suppliers/peddlers’ misused the ‘vehicles of VRL Logistics to fulfill their malicious intent’, which were just carried by the accused driver. This finding of the investigating officer is, of course, subject to final outcome in investigation. Therefore, this Court is prima facie of the opinion that rigors of Section 37 of the N.D.P.S. Act are not attracted in the peculiar backdrop of facts and circumstances concerning the present accused petitioner.

11. It is submitted by the learned counsel for the petitioner that a similarly circumstanced petitioner was granted bail and on the grounds of parity, the present petitioner is also entitled to bail.

12. I have also scrutinized the scanned copies of the LCR.

13. It is true that the petitioner is behind bars for 578 days, without trial.

14. Considering the peculiar backdrop of facts and circumstances concerning the present petitioner, petition is allowed. The petitioner is enlarged on bail of Rs. 1,00,000/- (Rupees One Lac) only with two local sureties of the like amount to the satisfaction of the learned trial Court and the learned trial Court may impose conditions to secure appearance of the petitioner, which the Court deems fit and proper. The learned trial Court is also directed to take measures for speedy disposal of the case.

15. Bail Application stands disposed of.

JUDGE

Comparing Assistant