

GAHC010271082023



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

Case No. : Bail Appln./4377/2023

TANMOY GUPTA
S/O LATE RATHINDRA KUMAR GUPTA
R/O USHA BAZAR,
AIRPORT ROAD,
P.S. AGARTALA AIRPORT,
AGARTALA,
DIST. WEST TRIPURA, TRIPURA,
PIN-799009

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : N CHAUDHURY

Advocate for the Respondent : PP, ASSAM

B E F O R E
HON'BLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

26.02.2024

- 1.** Heard Mr. N. Chaudhury, learned counsel for the petitioner and Mr. B.B. Gogoi, learned Addl. PP, Assam.
- 2.** The petitioner namely, Tanmoy Gupta has filed this application under Section 439 Cr.PC with prayer for bail as he is behind bars since 28.03.2023 in connection with NDPS Case No. 82/2023 arising out of Gorchuk PS Case No.

90/2023 registered u/s 20(c)/29 of the NDPS Act, 1985.

3. It is submitted on behalf of the petitioner that a similarly circumstanced accused has been granted bail in connection with Bail Application No. 4006/2023 vide order dated 29.01.2024. The present petitioner is the owner of the truck which was intercepted and contraband was found inside the truck. It is submitted that there is every possibility that the trial will end in acquittal and the bar u/s 37 of the NDPS Act will not be an embargo to grant bail. It is submitted that proper procedure was not complied with during seizure and sampling of the contraband and the trial will entail acquittal. It is also submitted that the petitioner is the sole bread winner of his family. The petitioner was earlier not arrested in connection with this case. The driver and the helper were arrested in connection with the case and the petitioner has been roped in as he is the owner of the truck.

4. On the contrary the learned Addl. PP has raised serious objection against the bail petition stating that commercial quantity of *ganja* was recovered from the petitioner's truck. At this stage it cannot be ascertained that the trial will entail acquittal. The bar u/s 37 of the NDPS Act, acts as an embargo.

5. I have considered the submissions at the bar with circumspection. First and foremost, the prayer of parity cannot be considered because the petitioner Dipankar Dey was neither the driver nor owner of the vehicle and he was granted bail vide order of this Court in Bail Application No. 4006/2023. Dipankar Dey was granted bail because he was the present petitioner's friend. However, the present petitioner is the owner of the truck which was carrying a commercial quantity of *ganja*. It is true that the petitioner has been behind bars for almost a year but at this juncture it cannot be considered that the petitioner's right to personal liberty has been curtailed. Charges have been

framed and this case is fixed for evidence. The allegation against the petitioner reveals that the rigour of Section 37 at this stage acts as an embargo against the bail petition. At this juncture I am not inclined to grant bail to the petitioner.

6. Petition with prayer for bail is made rejected at this juncture.

7. Trial Court may make endeavour to expedite the trial for speedy disposal of the trial. On further procrastination of the trial, the petitioner is at liberty to apply for bail subsequently and the Court may consider the bail petition as per merits of the case. Trial Court is directed to expedite the trial.

JUDGE

Comparing Assistant