

GAHC010277772023



THE GAUHATI HIGH COURT AT GUWAHATI
(The High Court of Assam, Nagaland, Mizoram and Arunachal Pradesh)

PRINCIPAL SEAT AT GUWAHATI

Bail Application No. 4479/2023

- 1) Sajal Das, age 46 years,
S/o. Sukendu Bikash Das,
R/o. Village Nayadil, Ishanpur,
P.S.-Sidhai, West Tripura,
District-West Tripura, Tripura.

- 2) Monohar Biswas, age 30 years,
S/o Madhu Sudhan Biswas,
R/o.-Village Purba Colony,
P.S.-Sidhai, West Tripura,
District West Tripura, Tripura.

.....Petitioners

-Versus-

The State of Assam,

Represented by the Public Prosecutor, Assam.

.....Opposite party.

Advocates for the Petitioner : Mr S Rahman

Advocate for the respondent: Mr B B Gogoi, APP.

BEFORE
HON'BLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

Date of Order : 12.02.2024

ORDER

Heard Mr. S. Rahman, learned counsel for the petitioners, 1) Sajal Das and 2) Monohar Biswas.

2. The petitioners have filed this application under Section 439 of the Code of Criminal Procedure, 1973 with prayer for bail as they are behind bars since 27.03.2023 in connection with NDPS Case No. 82/2023 arising out of Garchuk Police Station Case No. 90/2023 registered under Sections 20(C)/29 of the NDPS Act pending in the Court of learned Additional Sessions Judge No. 1, Kamrup (M).

3. It is submitted on behalf of the petitioners that six accused were

arrested in connection with this case. The petitioners are not named in the FIR. Subsequently, four accused were arrested. The petitioners are accused No. 3 and 4. The accused No. 2 named in the FIR was already released on bail vide order dated 29.01.2024 passed in connection with Bail Application No. 4006/2023. The petitioners have also prayed for bail on the ground of parity. The contraband was not recovered from the possession of the petitioners. The petitioners' personal liberty has been curtailed. The petitioners have relied on the decision of a Coordinate Bench of this Court in Bail Application No. 4006/2023 whereby the accused Dipankar Dey was enlarged on bail.

4. The learned Additional Public Prosecutor has raised serious objection stating that the petitioners cannot rely on the merits of this case at this juncture. Charges have been framed on 17.12.2023 and charge sheet has been laid against the petitioners. The petitioners' claim of innocence can be considered by the trial Court. Without examining a single witness, the petitioners are not entitled to bail at this juncture. 76.881 kgs of ganja was recovered in connection with this case. The rigour of Section 37 of the NDPS Act acts as an embargo.

5. The FIR unfolds that a reliable information was received by the OC of

Garchuk Police Station that a truck bearing Registration No. TR-01-AU-1894 was proceeding from Tripura and was carrying huge quantity of ganja, towards Jalukbari through Lokhra, to sell the ganja at different places under the Garchuk Police Station. The Investigating Team went to the checking point and halted the truck, but the driver of the truck alighted from the vehicle and tried to evade the patrolling party. The Police party, however, managed to intercept the vehicle at NH-27, near Lalunggaon in front of Bharat petrol pump. Two persons were found inside the truck, namely, Sri Babul Biswas and Haradhan Rishi Das. 76.881 kgs of ganja was seized from the truck. During investigation, the present petitioners were arrested in connection with this case.

6. I have considered the submissions by the learned Additional Public Prosecutor that at this juncture, the petitioners cannot claim innocence. The petitioners can seek exoneration before the learned trial Court, who may consider the evidence and consider the petitioners' claim that they are innocent. This case is pending at the initial stage of trial.

7. It is true that charges were framed against the petitioners. The grounds of arrest of the petitioners reflect that Tanmoy Gupta is the owner of the vehicle carrying the contraband and sufficient evidence was found against

him, of being involved in trafficking of illegal contraband. The accused Dipankar Dey was granted bail vide order of a coordinate Bench, dated 29.01.2024, passed in connection with Bail Application No. 4006/2023. It was held by the coordinate Bench of this Court that the learned Additional Public Prosecutor, Mr Baruah had submitted fairly that neither the co-accused had implicated the accused Dipankar, nor any contraband substance was recovered from his possession and Dipankar was arrested while he was travelling with Tanmoy Gupta, the owner of the vehicle, transporting the contraband from Tripura towards Guwahati.

8. I have considered the submission that the petitioners are similarly circumstanced petitioners. The driver and the handyman were forwarded to custody on 26.03.2023, while they carrying the contraband and the petitioners were subsequently forwarded to custody on 28.03.2023.

9. I have scrutinized the scanned copies of the Case Diary as well as the scanned copies of the LCR.

10. The merits and technicalities of this case are not brought to the fore.

11. Considering the peculiar facts and circumstances of this case, I deem it proper to grant bail to the petitioners.

12. In view of my foregoing discussions, petition is allowed. The petitioners are enlarged on bail of Rs. 1,00,000/-, with local solvent sureties each of the like amount to the satisfaction of the learned trial Court, under the conditions that-

i) the petitioners shall refrain from such activities with which they are alleged,

ii) the petitioners shall not jump the bail, and

iii) the petitioners shall not leave the jurisdiction of the learned trial Court, without prior permission, till completion of trial, and

iv) the petitioners shall appear regularly before the learned trial Court.

On breach of any bail conditions, bail order shall stand cancelled.

21. Bail Application stands disposed of.

JUDGE

Comparing Assistant