

GAHC010283362023



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

Case No. : Bail Appln./4543/2023

GOGOI DEORI@ PALLAB DEURI@ RAJ KUMAR DEORI
S/O SHRI DHANESWAR DEORI
R/O VILL- JARABARI NEAR FCI, P.O. -784164, P.S. NARAYANPUR,
DIST. LAKHIMPUR, ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. P J SAIKIA, SR. ADV

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

Date : 19.01.2024

- 1)** Heard Mr. P. J. Saikia, learned senior counsel assisted by Mr. P. Bordoloi, learned counsel for the petitioner. Also heard Ms. S. Jahan, learned Additional Public Prosecutor for the State.
- 2)** This application under Section 439 of the Code of Criminal Procedure,

1973 has been filed by the petitioner, namely, Gogoi Deori @ Pallab Deuri @ Raj Kumar Deori who is detained behind the bars since 04.12.2023 in connection with Special (NDPS) Case No. 18/2023 under Section 20(b)(ii)(C) of the NDPS Act, 1985 pending before the Court of learned Additional Sessions Judge (FTC), Lakhimpur, North Lakhimpur.

3) The gist of accusation in this case is that on 13.12.2022, one Rikumoni Medhi S. I. of police lodged an FIR, before the Officer-in-Charge of the Narayanpur Police Station, *inter-alia*, alleging that on receipt of information through reliable sources that one Moina Kachari is selling suspected Ganja in his residence for business purposes, a search operation was conducted in the residence of said Moina Kachari and 110.045 kg of suspected *ganja* was recovered from the residence of the said Moina Kachari.

4) On receipt of the said FIR, Narayanpur P. S. Case No. 78/2022 under Section 20(b)(ii)(C) of the NDPS Act, 1985 was registered and investigation was initiated. After completion of investigation, the charge sheet was laid against four numbers of accused persons including the present petitioner showing him as an absconder in the column No. 2 of the charge sheet under Section 20(b)(ii)(C) of the NDPS Act, 1985.

5) It is submitted by learned senior counsel for the petitioner that though the petitioner was shown as an absconder in the charge sheet, he was never searched by the police during the course of investigation and when non bailable warrant of arrest was issued against the present petitioner by the Trial Court, he preferred a criminal petition which was registered as Criminal Petition No. 1258/2023 wherein by order dated 30.11.2023 the petitioner was directed to appear before the Trial Court and the non bailable warrant which was issued against him was kept in abeyance till 04.12.2023.

6) It is further submitted by the learned senior counsel for the petitioner that in pursuant to the directions of this Court, the petitioner appeared before the Trial Court i.e., the Court of learned Additional Sessions Judge (FTC), Lakhimpur, North Lakhimpur on 04.12.2023 and had preferred a bail application. However, the said application was rejected by the Trial Court on the ground that the embargo of Section 37 of the NDPS Act, 1985 is applicable in the instant case.

7) Learned senior counsel for the petitioner has also submitted that in the instant case apart from the statement of the co-accused which were recorded under Section 161 of the Code of Criminal Procedure, 1973 and Section 67 of the NDPS Act, 1985, no incriminating material could be collected by the Investigating Officer against the present petitioner and learned Senior counsel has also submitted that in terms of the judgment of the Apex Court in "**Tofan Singh Vs. State of Tamil Nadu**" reported in **(2021) 4 SCC 1**, the confessional statement made under Section 67 of the NDPS Act, 1985 is inadmissible as evidence in trial. Learned senior counsel for the petitioner has also cited a ruling of the Apex Court in "**State Vs. Pallulabid Ahamad Arimutta and Others**" reported in **AIR online 2022 SC 130** wherein it was observed that the confessional statement of the accused or the co-accused recorded under Section 67 of the NDPS Act, 1985 cannot be the basis of overturning the orders of releasing the accused person on bail.

8) Learned senior counsel for the petitioner has submitted that for applying the embargo of Section 37 of the NDPS Act, 1985 in the instant case some other material must be there against the present petitioner apart from the statement of the co-accused which were recorded under Section 161 of the Code of Criminal Procedure, 1973 and Section 67 of the NDPS Act, 1985.

However, in the instant case, no such material is available on record and therefore, it is submitted by learned senior counsel for the petitioner that for the limited purpose of consideration of the instant bail application, it can be said that there is no reasonable ground for believing that the present petitioner has been guilty of the offence alleged against him in this case.

9) It is further submitted by learned senior counsel for the petitioner that in the meanwhile the other co-accused persons namely, Moina Kachari @ Tulashi, Haren Kachari and Pranjal Deori have already been granted bail by a Coordinate Bench of this Court in Bail Application No. 3067/2023 by order dated 18.10.2023.

10) On the other hand, learned Additional Public Prosecutor has submitted that from the scanned copy of the case diary of the Narayanpur P. S. Case No. 78/2022, it appears that there are implicating materials against the present petitioner in the case diary. However, she has fairly submitted that the said implicating materials are the statements of the co-accused Moina Kachari and the other co-accused who have stated in their statement recorded under Section 161 of the Code of Criminal Procedure, 1973 that the seized contraband was kept in the house of the Moina Kachari by the present petitioner along with other co accused persons.

11) Learned Additional Public Prosecutor has also referred to the statements made by other witnesses under Section 161 of the Code of Criminal Procedure, 1973, wherein they have stated that they know that the present petitioner has been indulging in the business of illicit drug for a long time.

12) I have considered the submissions made by the learned counsel for both the parties and have gone through the materials available on record including the scanned copy of the case record of Special (NDPS) Case No. 18/2023 as

well as the scanned copy of the case diary of Narayanpur P. S. Case No. 78/2022.

13) On perusal of the materials available on record it appears that apart from the statements of the co-accused persons recorded under Section 161 of the Code of criminal Procedure, 1973, implicating the present petitioner, there is no other material on record connecting the present petitioner with the seized contraband. Though there are statement of independent witnesses recorded under Section 161 of the Code of Criminal Procedure, 1973, wherein they have stated that the present petitioner has been indulged in the businesses of illicit drugs since long, no specific statement has been made by any independent witnesses linking the present petitioner to the contraband which has been recovered from the house of the co-accused Moina Kachari in this case. It has been observed by the Apex Court in many of its judgments including “**Tofan Singh Vs. State of Tamil Nadu**” (*Supra*) that the confessional statement of the co-accused recorded under Section 67 of the NDPS Act, 1985 is inadmissible as evidence in trial and same may not be the basis for refusing the bail to an accused. Hence, this Court is of the considered opinion that as in the present case, apart from the statement of the co-accused there is no other material against the present petitioner and as the said statements are inadmissible in evidence, hence, for the limited purpose of the consideration of the instant bail application, this Court is of the opinion that there are reasonable grounds to believe that the petitioner is not guilty of the evidence alleged in the FIR in the instant case.

14) Further, as there is no material on record to show any earlier criminal antecedent of the present petitioner, and also as there is no material on record to come to a finding that if he is released on bail, he may commit any other

offence, therefore, this Court is of the considered opinion that the embargo of Section 37 of the NDPS Act, 1985 is not applicable in the case of the present petitioner.

15) For the reasons mentioned hereinabove, the petitioner named above shall be released on bail in connection with Special (NDPS) Case No. 18/2023, registered under Section 20(b)(ii)(C) of the NDPS Act, 1985, pending before the Court of the learned Additional Sessions Judge (FTC), Lakhimpur, North Lakhimpur, on furnishing a bail bond of Rs.1,00,000/- (Rupees One Lakh only) each with two suitable sureties each of the like amount (one of the sureties should be a Government employee) to the satisfaction of learned Additional Sessions Judge (FTC), Lakhimpur, North Lakhimpur subject to the following conditions:

- i. That the petitioner shall not leave the territorial jurisdiction of learned Additional Sessions Judge (FTC), Lakhimpur, North Lakhimpur without prior written permission from him ;
- ii. That the petitioner shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer.
- iii. That the learned Additional Sessions Judge (FTC), Lakhimpur, North Lakhimpur may impose any additional condition(s) if he deems it fit and proper to do so to procure the attendance of the petitioner during trial.

16) The observations made in this order are limited only for the purpose of disposal of the instant bail application and shall not have any bearing upon the trial pending against the present petitioner.

17) This bail application is accordingly disposed of.

JUDGE

Comparing Assistant