

GAHC010286442023



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

Case No. : Bail Appln./4585/2023

SARLONG TISSO
S/O SRI BIDYASING TISSO
R/O HARI INGLENG GAON,
MATIKHULA, DENGAON
P.S. DOKMOKA
DIST. KARBI ANGLONG, ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. M SAIKIA

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

ORDER

Date : 30-01-2024

Heard Mr. M. Saikia, learned counsel for the petitioner Sarlong Tisso.

2. The petitioner has filed this application under Section 439 of the Code of Criminal Procedure, 1973 with prayer for bail as he is behind bars since

11.04.2023 in connection with NDPS Case No. 47/2023 arising out of Howraghat Police Station Case No. 17/2023 under Sections 22(c)/29 of the NDPS Act.

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

4. The FIR unfolds that on 11.04.2023 an information was received from a reliable source relating to transportation of large quantity of contraband to Diphu through NH-29 concealed inside a Maruti Alto vehicle. A naka checking was conducted at NH-29 and the Maruti Alto vehicle bearing registration No.As-08/4773 was detained and searched by the investigating team and two persons were found travelling inside the vehicle. One accused was the present petitioner. The accused persons hesitated to answer the questions when they were confronted by the investigating team. Finally a plastic bag was recovered from the possession of the petitioner containing:

1. *373 Nitrosum tablets.*
2. *108 Nitrozepam tablets*
3. *403 Sampex tablets.*
4. *10 syringes and a mobile phone.*

5. All those articles were seized from the possession of the petitioner and the co-accused. It is submitted on behalf of the petitioner that the petitioner is a young man and he was not aware that the contraband was kept in his car. He was enthusiastically driving the car since it was newly purchased. The petitioner is only 21 years old and he is not complicit.

6. *Per contra* the learned Additional Public Prosecutor has raised objection stating that charge sheet has already been laid against the petitioner and at this juncture the petitioner cannot plead innocence. Not a single witness has been examined. The petitioner is booked under a grave offence and his bail

application is fettered by embargo under Section 37 of the NDPS Act. This is not a case where trial has been procrastinated to enlarge an accused on bail on the ground of infringement of personal liberty. Charge sheet was submitted on 30.06.2023 and charge was framed on 02.09.2023. This case is fixed for evidence. The petitioner is not entitled to bail and the bail petition ought to be rejected as per Section 37 of the NDPS Act.

7. The learned counsel for the petitioner further submitted that the petitioner is a student and he is innocent. However, the learned counsel for the petitioner has submitted through his argument that even the contraband seized from the possession of the petitioner cannot be said to be of commercial quantity if the FSL report is taken into consideration.

8. On the contrary the learned Additional Public Prosecutor has submitted that the FSL report clearly reveals the weight of the composition of the banned tramadol and nitrozeepam of each tablet and capsule seized in connection with this case. A careful scrutiny would reveal that the quantity is much above the commercial quantity and the petitioner is not entitled to bail.

9. I have considered the submissions at the bar with circumspection and I have also scrutinized the FSL report along with the seizure list. At this juncture the intricacies and the technicalities of the quantity found to be present in the seized contraband by the chemical examination report is not taken into consideration. Charges have already been framed by the learned trial Court under Section 22(c)/29 of the NDPS Act. In my opinion this is not a case where trial has been procrastinated by the Court or by the prosecution. Trial has just commenced. At this juncture it cannot be held that due to procrastination of the trial, the personal liberty of the petitioner has been curtailed. This Court cannot be oblivious of the embargo under Section 37 of the NDPS Act. There appears

to be no justified ground to grant bail to the petitioner at this stage.

Petition is rejected at this stage.

Bail Application stands disposed of accordingly.

JUDGE

Comparing Assistant