

GAHC010289672023



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

Case No. : Bail Appln./4691/2023

HIRANYA THAKURIA
S/O SRI UTTAM THAKURIA
R/O VILL- BOROMBOI
HAJO, KAMRUP, ASSAM
PIN-781104

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. M K CHOUDHURY

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI

ORDER

Date : 17.05.2024

Heard Mr. P.Bharadwaj, learned counsel for the petitioner and Mr. M.Phukan, learned Public Prosecutor for the State respondent.

2. By filing this petition under Section 439 Cr.P.C., the petitioner, namely, **Hiranya Thakuria** has prayed for grant of bail in connection with **North Guwahati P.S. Case**

No.151/2023 under Sections 353/333/307/279/338/34 of the IPC r/w Section 21(c)/29 of the NDPS Act r/w Section 25 (1-A)/27/35 of the Arms Act,1959.

3. The brief fact of the case is that on 03.12.2023, an FIR has been lodged before the officer-in-charge of Palashbari PS stating inter-alia that on that day in the morning hour at about 8 am an information has been received that commercial quantity of narcotic drugs would be transported from Hajo to Amingaon in a Swift car bearing no. AS-01FQ-8535. Accordingly, the police was in search of the said vehicle. At around 11.15 am, the said vehicle was traced in a petrol pump near Judicial Academy, Amingaon. The police tried to surround the vehicle and while opened the door of the vehicle to catch the driver, at this moment, suddenly, the persons occupied the vehicle started firing from inside the vehicle and the driver of the vehicle in order to escape, drove the vehicle with high speed as a result of which, two police personnel were injured. In order to prevent escape of the vehicle carrying narcotic drugs, one police personnel fired from his service weapon at the tyre of the vehicle. Though the vehicle sped of towards Hajo side, the police team chased the said vehicle. Ultimately after hitting a tempo, the Swift car stopped and the occupants of the vehicle were apprehended. On being searched, one factory made pistol and ammunitions and a black colour bag was found inside the vehicle containing 30 soap boxes having commercial quantity of heroin. Accordingly, a fire arm and narcotic drugs were seized. All the three occupants of the vehicle were shifted to the hospital out of which Salam was declared dead by the doctor. Thereafter, a case was registered vide North Guwahati PS Case No. 151/2023.

4. It is submitted by the learned counsel for the petitioner that the petitioner is innocent and has been falsely implicated in this case. The petitioner is a businessman having a grocery shop in Hajo area. On the date of incident, while he was driving his vehicle towards his house, he met two other accused persons on the way and they requested him for a lift in his car. Accordingly, he allowed two other co-accused to give lift in his car. It is further submitted that the person name Salam (now expired) was carrying a black colour hand bag sat at the back seat while the other co-accused Faizul occupied the seat behind the petitioner. Thereafter, the petitioner stopped at a nearby petrol pump to refill his vehicle. When some police officials approached his vehicle and opened the driver's door, suddenly the co-accused

Faizul took out the fire arm and started to fire at the police officials and threatened the petitioner asking him to flee away from the scene at high speed. Fearing his own life, the petitioner drove the vehicle with high speed and met with an accident. It is further submitted that the petitioner sustained bullet injuries in the alleged incident.

5. It is also the submission of learned counsel for the petitioner that no any contraband was recovered from his possession. The person who died in the incident was carrying the bag from which the contraband was recovered . It is further contended that the accused petitioner has been detained in custody for last 167 days. The doctor advised him to undergo surgeries for the injuries sustained in the incident. Under such backdrop, the learned counsel for the petitioner submits that considering length of detention as well as on medical ground, the petitioner be released on bail.

6. In response, learned Public Prosecutor produced the case diary and submits that the petitioner is the owner of the vehicle from which commercial quantity of heroin was recovered. The FSL report is also received which gave positive test for heroin. Learned PP has further submitted that in connection with the alleged incident, the statement of three pedestrians were recorded by the Magistrate under Section 164 CrPC. They have confirmed that the persons who occupied the Swift car started firing from inside the vehicle and driver of the vehicle drove the vehicle with high speed and fled away from the scene. The witnesses also stated that from the vehicle , 30 nos. of soap cases were recovered containing white/orange coloured powdery substance. According to learned P.P., as the petitioner is very much involved in trafficking of narcotic drugs, bail may not be considered. Learned PP also pointed out that TIP was conducted by the JMFC, Kamrup in which independent witnesses have identified the accused/petitioner as being the one from whom the contraband, pistol etc. was recovered.

7. In support of his submission, learned P.P. has placed reliance on the judgment of Hon'ble Supreme Court in the case of *State by the Inspector of Police –vs- B.Ramu (reported in SLP (Crl.) No.8137/2022)*.

8. I have perused the case diary which reveals that the petitioner was the driver of the Swift vehicle from which commercial quantity of heroin was recovered. The statement of

witnesses recorded under Section 164 CrPC has indicated that there was firing on the police team and the contraband, arms and ammunitions were recovered from the vehicle which was driven by the present petitioner. On the TIP before the learned Magistrate, the witnesses also identified the accused petitioner from whose vehicle the contraband, arms and ammunitions were recovered. FSL report also confirms positive test for heroin.

9. Having heard learned counsel for the parties and on perusal of the case diary, this court finds that it is not a fit case to grant the petitioner the privilege of bail.

10. In view of above, the bail application is rejected.

11. Send back the case diary.

The bail application is disposed of accordingly.

JUDGE

Comparing Assistant