

GAHC010008552024



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

Case No. : Bail Appln./176/2024

RAFIQUR RAHMAN
S/O LATE AFTAR ALI
VILL- SAGALMUA
P.O. BAZARICHERRA
P.S. BAZARICHERRA
DIST. KARIMGANJ, ASSAM
PIN NO. 788727

VERSUS

THE STATE OF ASSAM
TO BE REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR H R A CHOUDHURY

Advocate for the Respondent : PP, ASSAM

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

08.02.2024

1. Heard Mr. A. Ahmed, learned counsel appearing for the petitioner as well as Mr.

B.B. Gogoi, learned Additional Public Prosecutor for the State respondent.

2. This application under Section 439 Cr.P.C, is preferred by the petitioner, namely, Rafiqur Rahman, who is in judicial custody since 08.04.2023 in connection with Karimganj Special (NDPS) Case No. 30/2023 arising out of Bazaricherra P.S. Case No. 81/2023, registered under Sections 22(C)/25/29 of NDPS Act, 1985.

3. I have considered the submissions at the Bar. I have also scrutinized the scanned copies of the LCR.

4. It is submitted on behalf of the petitioner that the petitioner was the driver of a commercial bus. Goods were loaded in the bus. The petitioner was not aware that allegedly illegally cough syrup bottles were loaded in the bus. It is further submitted that till date the investigating team could not ascertain who loaded the cough syrup bottles in the bus. The petitioner cannot be held for conscious possession of the cough syrup and section 37 of the NDPS Act is not relevant to this case. The petitioner has also prayed for bail on the grounds of parity as a similarly circumstanced co-accused, namely, Lorik Ram was granted bail vide order dated 27.05.2022 in connection with Bail Application No. 965/2022.

5. The learned Addl. P.P. has raised objections stating that ratio of Lorik Ram's case is not applicable to this case. The petitioner was the driver and the handyman is the co-accused. Both were aware that the cough syrup were loaded in the bus and they were thus in conscious possession of the contraband. This is not a case where the trial has been procrastinated by the Court or by the prosecution. Charges were framed on 08.11.2023. On 08.01.2024, two PWs were present but the defence took time and cost was imposed on the defence, as the PWs were not examined. The petitioner does not deserve bail. The bail petition ought to be rejected.

6. In this case, the FIR unfolds that a secret information was received by the

investigating team from a reliable source that one ultra bus bearing registration No. AS-10-AC-2730 approaching from Karimganj towards Rangamathi was loaded with cough syrup by the driver, namely, Rafiqur Rahman-petitioner herein, and the conductor, namely, Jabrul Islam. During spot interrogation, the petitioner and the co-accused could not give satisfactory reply about the suspected codeine cough syrup. The cough syrup was seized as per proper procedure. 420 bottles of codeine cough syrup was seized in connection with this case. Charge-sheet has been laid against the petitioner and the charges were framed.

7. At this stage, the petitioner cannot claim innocence until they are exonerated by the evidence of the witnesses. The trial has just commenced. It is true that there was a delay in framing of charges but the delay was not to such an extent that could result in curtailment of fundamental right of personal liberty of the petitioner guaranteed by Article 21 of the Constitution of India. The petitioner is facing trial in a serious offence. It has been held by the Hon'ble the Supreme Court of India, in the case of ***Tarun Kumar Vs. Assistant Director Directorate of Enforcement*** reported in ***(2023) 4 Crimes (SC) 442***, wherein, it has been observed that:-

“19. It is axiomatic that the principle of parity is based on the guarantee of positive equality before law enshrined in Article 14 of the Constitution. However, if any illegality or irregularity has been committed in favour of any individual or a group of individuals, or a wrong order has been passed by a judicial forum, others cannot invoke the jurisdiction of the higher or superior court for repeating or multiplying the same irregularity or illegality or for passing similar wrong order. Article 14 is not meant to perpetuate the illegality or irregularity. If there has been a benefit or advantage conferred on one or a set of people by any authority or by the court, without legal basis or justification, other persons could not claim as a matter of right the benefit on the basis of such wrong decision.”

8. In the light of the decision of the ***Tarun Kumar (supra)***, the prayer for bail of the

petitioner stands rejected at this stage.

9. In case of further procrastination of trial, the petitioner is at liberty to apply for bail afresh, which may be considered by the Court as per merits of the case. The trial court is directed to expedite the trial for speedy disposal of the case.

JUDGE

Comparing Assistant