

GAHC010014032024



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

Case No. : Bail Appln./253/2024

RAJWINDER SINGH
S/O HARBANS SINGH
R/O VILL- THULEWAL
P.S. BARNALA
DIST. BARNALA, PUNJAB

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : J DASGUPTA

Advocate for the Respondent : PP, ASSAM

BEFORE
HON'BLE MR. JUSTICE ROBIN PHUKAN

ORDER

05.02.2024

Heard Mr. T. Kalita, learned counsel for the accused and also heard Mr. R.J. Baruah, learned Additional Public Prosecutor, Assam, appearing for the State respondent.

2. This application, under section 439 Cr.P.C. is preferred by accused, namely,

Rajwinder Singh, who has been languishing in jail hazot since 15.12.2023, in connection with GRPS Case No.255/2023, under Section 17(c) of the NDPS Act, for grant of bail.

3. It is to be noted here that the above noted case has been registered on the basis of an FIR lodged by Head Constable Rupam Baruah of Assam Police on 15.12.2023. The essence of allegation made in the aforesaid FIR is that on that day at around 5:00 a.m. in the morning he along with GRP staff conducted checking in different trains at Guwahati Railway Station and after checking Train No.12423 DN New Delhi Rajdhani Express, at PF No.1, at around 7:28 a.m., they apprehended one person with a waist bag of dark grey colour, sitting on Berth/Seat No.25, and after checking the bag, they recovered 0.774 kg of suspected opium and seized the same in presence of witnesses.

4. Mr. Kalita, learned counsel for the accused, submits that the accused was arrested on 15.12.2023 and since then he has been languishing in jail hazot for last 53 days and that the quantity of contraband substance, allegedly recovered from the possession of the accused is not of commercial quantity and as such, the case ought to have been registered under Section 17(b) of the NDPS Act instead of Section 17(c) of the said Act and that the accused is ready to cooperate with the investigating agency and therefore, it is contended to allow the petition.

5. Whereas, Mr. R.J. Baruah, learned Additional Public Prosecutor, Assam, has produced the case diary before this Court and submits that the I.O. has achieved substantial progress in the investigation of the case and now it is pending for collection of FSL report. Mr. Baruah also fairly submits that given the quantity of contraband substance, so recovered from the possession of the accused, the case ought to have been registered under Section 17(b) of the NDPS Act instead of Section 17(c) of the said Act.

6. Having heard the submission of learned Advocates of both sides, I have gone through the petition and the documents placed on record and also perused the case diary with the assistance of Mr. Baruah, learned Additional P.P.

7. It appears that the informant has found 0.774 kg (approximate) suspected opium

from the possession of the accused and the same is indisputably is of intermediate quantity and as such the bar of Section 37 of the NDPS Act will not come into play here in this case. Further, it appears that the accused has been languishing in jail hazot for last 53 days and that the case diary indicates that material part of investigation is almost over and the case is pending for collection of FSL report only.

8. Under the aforementioned facts and circumstances, further custodial detention detention of the accused seems to be not warranted here in this case and accordingly, this Court is inclined to allow this petition. It is provided that on furnishing a bond of ₹ 50,000/- with two sureties of the like amount, one of whom should be a Government servant, to the satisfaction of the learned Special Judge (NDPS Act), Kamrup(M), the accused, namely, Rajwinder Singh, be enlarged on bail. Case diary be returned.

9. In terms of above, this bail application stands disposed of.

Sd/- Robin Phukan
JUDGE

Comparing Assistant