

GAHC010064342024



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

Case No. : Bail Appln./915/2024

SAGAR DHUNGANA
S/O SRI KAMAL DHUNGANA
VILL- KANGLATONGBI, HOUSE NO. 35, P.S. SEKMAI
DIST. IMPHAL WEST, MANIPUR,

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MOTIUR RAHMAN

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

Date : 26.06.2024

- 1.** Heard Mr. M. Rahman, learned counsel for the petitioner. Also heard Mr. B. Sarma, 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, Mr. Sagar Dhungana,

who has been detained behind the bars since 15.10.2023 in connection with NDPS Case No.1/2024, corresponding to Khatkati P.S. Case No. 105/2023 under Section 18(b) NDPS Act, 1985.

3. The gist of the accusation in this case is that on 14.10.2023, one Sri Deepak Lahon, SI of Police, had lodged a FIR before the Officer-in-Charge of Khatkati Police Station, *inter-alia*, alleging that on 13.10.2023 at about 11.30 p.m., while performing naka checking duty at National Highway No. 39 near SBI Khatkati Branch, one vehicle bearing Registration No. NL07AA3057 coming from Dimapur side was intercepted and two persons including the present petitioner who was in the said vehicle as the helper were apprehended and search of the said vehicle, six number of packet wrapped in brown colour tape containing black colour jelly substance suspected to be opium concealed inside the blanket of light blue colour with white strips were recovered from inside the cabin of the said truck.

4. On receipt of the said FIR, the Khatkati P.S. Case No. 105/2023 was registered and investigation was initiated. Ultimately, on completion of investigation, charge sheet was laid against two accused persons including the present petitioner, under Section 18(b) of the NDPS Act, 1985.

5. Learned counsel for the petitioner has submitted that though the petitioner has been detained behind the bars since the date of his arrest on 15.10.2023 and the charges were framed against him on 26.02.2024, not even a single witness has been examined in this case till date.

6. Learned counsel for the petitioner has also submitted that the petitioner does not have any criminal antecedent and this is for the first time he has been

involved in a criminal offence and therefore, considering the fact of absence of any criminal antecedent, he may be allowed to go on bail. In support of his submission, learned counsel for the petitioner has cited a ruling of the Apex Court in the case of “***Dheeraj Kumar Shukla Vs. State of Uttar Pradesh***” reported in ***2023 0 Supreme (SC) 1274***.

7. Learned counsel for the petitioner has also submitted that in the instant case there has been a violation of Section 52A of the NDPS Act, 1985 as Rule 3 (2) and Rule 3 (3) of the Narcotic Drugs and Psychotropic Substance (Seizure, Storage, Sampling and Disposal) Rules, 2022 were not followed in this case as at the time of seizure and at the time of sampling, the six packages in which the contraband was found were not weighed separately.

8. Learned counsel for the petitioner has also submitted that there has been violation of Rule 5 and Rule 7 of the aforesaid Rules as there is nothing to show that the contraband was deposited in any Godown as per the said Rules.

9. Learned counsel for the petitioner has submitted that if the mandate of Section 52A of the NDPS Act, 1985 is not followed, then the same is fatal to the prosecution case and the petitioner is entitled to get bail. In support of his submission, learned counsel for the petitioner has cited following rulings :

- i.** Mohammad Khalid and Another Vs. State of Telangana, reported in 2024 3 SCR 23.
- ii.** Mangilal Vs. State of Madhya Pradesh, reported in 2023 5 Supreme 189.
- iii.** Amzad Khan Vs. State of Rajasthan (Order dated 27.05.2024 in

Bail Application No. 9625/2023 passed by the High Court of Rajasthan)

10. Learned Additional public prosecutor has submitted that since the quantity of contraband involved in this case is of commercial quantity, the embargo of Section 37 of the NDPS Act is applicable in this case.

11. He has also submitted that since the petitioner was arrested only on 15.10.2023, and the petitioner has been behind the bar for only 8 month, this is not a case of prolonged incarceration.

12. He has also submitted that as the contraband seized in this case was in jelly form, the same was weighed along with the container and that may not be regarded as a violation of Rules 3 (2) and Rules 3 (3) of the Narcotic Drugs and Psychotropic Substance (Seizure, Storage, Sampling and Disposal) Rules, 2022.

13. The learned counsel for the petitioner has also submitted that the ruling of the Apex Court in the case of “***Dheeraj Kumar Shukla Vs. State of Uttar Pradesh (Supra)***”, cited by the learned counsel for the petitioner, is applicable only to those cases where there is an absence of criminal antecedent, coupled with the fact that the accused is detained behind the bars for a prolonged period. In the aforesaid, the petitioner was in custody for more than two and a half years.

14. I have considered the submissions made by the learned counsel for both sides and have perused the materials available on record.

15. On perusal of the case record, it appears that on 15.10.2023, the

Investigating Officer had made prayers to the learned Judicial Magistrate, 1st Class, Bokajan for certifying the correctness of inventories, taking photographs of the inventories and drawing of samples of seized contraband under Section 52A of the NDPS Act, 1985.

16. It also appears that by the said order, the learned Judicial Magistrate, 1st Class, Bokajan had certified the correctness of the inventories as well as the samples were also drawn in his presence. Thus, prima facie, it is not a case where there is non-compliance of Section 52A of the NDPS Act, 1985.

17. The ruling cited by the learned counsel for the petitioner in cases of "**Mohammad Khalid and Another Vs. State of Telangana**"/ (*Supra*), "**Mangilal Vs. State of Madhya Pradesh**" (*Supra*), and "**Amzad Khan Vs. State of Rajasthan**" (*Supra*), there was a total non-compliance of the mandate of Section 52A of the NDPS Act, 1985.

18. However, in the instant case, same is not the case as apparently it appears that the procedure prescribed under Section 52A of the NDPS Act, 1985 was followed by the Investigating Officer on 15.10.2023.

19. Though the learned counsel for the petitioner has relied on the ruling of "**Dheeraj Kumar Shukla Vs. State of Uttar Pradesh** (*Supra*)".

20. However, in the said case, the Apex Court gave bail to the petitioner of the said case on the ground of absence of criminal antecedent, coupled with the fact that he was languishing behind the bars for two and a half years, which is not the case in the instant case, even if we presume that there is no criminal antecedent of the petitioner, however, his detention for the last eight months may not be regarded as prolonged detention, so as to get the benefit of the

observations made by the Apex Court in the case of “***Dheeraj Kumar Shukla Vs. State of Uttar Pradesh (Supra)***”.

21. Moreover, the quantity of contraband seized in this case is of commercial quantity, hence the embargo of Section 37 of the NDPS Act, 1985 is applicable to this case, therefore, the petitioner is not entitled to get bail.

22. For the above mentioned reasons, the prayer for bail of the afore named petitioner is accordingly rejected.

JUDGE

Comparing Assistant