

GAHC010044222024



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

Case No. : Bail Appln./661/2024

MOHAMMAD MAJRUL AND ANR
S/O- MOHAMMAD UNNIS, R/O- USARAIHIYA, P.S. TINTANGA, GOPALPUR,
DIST.- BHAGALPUR, BIHAR

2: MOHAMMAD BEEJAL
S/O- MOHAMMAD JINNAT
R/O- GYANI DAS TOLA
P.S. TINTANGA
GOPALPUR
DIST.- BHAGALPUR
BIHA

VERSUS

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

Advocate for the Petitioner : MR. M A CHOUDHURY

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

Date : 10.06.2024

1. Heard Mr. M. A. Choudhury, learned counsel for the petitioners. Also heard Mr. P. Sarmah, learned Additional Public Prosecutor for the State

respondent.

2. This application under Section 439 of the Code of Criminal Procedure, 1973 has been filed by the petitioners, namely, (1) Mohammad Majrul and (2) Mohammad Beejal who are detained behind the bars since 25.08.2022 (for the last 655 days), in connection with Special NDPS Case No. 121/2022, corresponding to Bazaricherra P.S. Case No. 156/2022 under Sections 20(b)(ii)(C)/29 of the NDPS Act, 1985.

3. The gist of accusation in this case is that on 25.08.2022, one Dibakor Gogoi, S.I. of Police of Kathaltoli W.P. had lodged an FIR before the Officer-In-Charge of Bazaricherra Police Station, *inter-alia*, alleging that on that day an information was received that four persons were travelling on a passenger magic vehicle and were carrying 7 to 8 bags of Ganja with them. Accordingly, on the same day, at about 12.15 PM, the first informant arrived at Kathaltoli Bazar Magic stand and found four persons with luggage as passenger in magic vehicle bearing Registration No. AS-11-AC2925. All the four persons were apprehended and eight bags belonging to them were also seized and it was found that they were carrying total 73 kgs of Ganja in fifteen (15) numbers of packets.

4. On the basis of the said FIR, Bazaricherra P.S. Case No. 156/2022 was registered under Sections 20(b)(ii)(C)/29 of the NDPS Act, 1985 and investigation was initiated.

5. Ultimately, on completion of the investigation, the charge-sheet was laid against four (04) numbers of accused persons including the present petitioners.

6. The learned counsel for the petitioners has submitted that though the petitioners have been detained behind the bars, for the last 1 year, 9 months,

16 days, however, the trial against them is still to culminate.

7. It is also submitted by the learned counsel for the petitioners that though, the contraband seized from the petitioners were from their individual capacity and from perusal of the FIR itself appear that the quantity of contraband seized from the petitioner No. 1 namely, Mohammad Majrul was 15 kg in total, and the quantity of contraband seized from the petitioner No. 2 namely, Mohammad Beejal, was 20 kg in total and it is submitted by the learned counsel for the petitioners that both the said quantities are below the quantity required for "ganja" to be considered as a commercial quantity and therefore, he has prayed that considering the quantity of the contraband seized as well as period of detention undergone by the petitioners, they may be allowed to go on bail.

8. The learned counsel for the petitioners has also submitted that, on the same ground, two other accused persons, namely, Pawan Kumar Yadav and Sanoj Kumar, who were also arrested in connection with the same case, along with the above-mentioned petitioners, have already been granted bail by this Court by order dated 03.04.2024 in Bail Application No. 2824/2023.

9. The learned counsel for the petitioners has submitted that as the seizure from the petitioners was made individually from their luggage which was carried individually by the petitioners as has been mentioned in the FIR and as there is nothing on record to show that there was any abatement or conspiracy within the meaning of Section 29 of the NDPS Act, 1985 the contraband seized from the petitioners could not have been calculated to bring it under the purview of the commercial quantity.

10. It is submitted by the learned counsel for the petitioners that if

calculated individually, the total quantity of contraband seized from each of the present petitioners would be less than commercial quantity, as for being commercial quantity of "Ganja" it has to be more than 20 kgs which is not the case in the instant case. The learned counsel for the petitioners has also submitted that if the seized contraband is calculated individually it would not be within the purview of commercial quantity and, therefore, the embargo of Section 37 of the NDPS Act, 1985 would not be applicable in this case. In support of his submissions, the learned counsel for the petitioners has cited a ruling of the Apex Court in the case of "**Amarsingh Ramjibhai Barot Vs. State of Gujarat**" reported in **(2005) 7 SCC 550** wherein it was observed as follows:-

"8. Although, at first blush, the argument of the learned counsel appeared attractive, on careful appreciation of the facts on record we are satisfied that the High Court judgment is fully justified and needs to be upheld. It is true that the High Court proceeded on the footing that there was a criminal conspiracy between the appellant and the deceased Danabhai Virabhai Rabari. In our view, however, there was no warrant for this conclusion at all as there is no evidence to suggest that there was any such abetment and/or criminal conspiracy within the meaning of Section 29 of the NDPS Act. The appellant and Danabhai Virabhai Rabari were found together, but individually carrying the recovered substances. Hence, it was not possible for the High Court to take the view that Section 29 was attracted."

11. The learned counsel for the petitioners has also cited a ruling of the High Court of Bombay in the case of "**Smt. Rashida Iqbal Khan Vs. State of Maharashtra**" (Criminal Application No. 2177/2006 dated 21.06.2006) as another ruling of the High Court of Bombay in the case of "**Sagar Nana Borkar Vs. The**

State of Maharashtra” (In Criminal Bail Application No. 3636/2022, dated 15th September, 2023).

12. On the other hand, Mr. P. Sharma, learned Additional Public Prosecutor, has opposed the grant of bail to the present petitioners on the ground that all the four (04) accused persons who were arrested in this case were found together in the “magic” vehicle bearing Registration No. AS-11AC-2925 and all were from Bihar and were going to Bihar from Patharkandi and if the total quantity of contraband seized from all of them is considered together, it would come to 73 kgs, which is much more than commercial quantity and therefore, he submits that embargo of Section 37 of the NDPS Act, 1985 is applicable in this case.

13. It is also submitted by learned Additional Public Prosecutor that mere fact that the all the four accused persons including the present petitioners were found in the same vehicle carrying the same contraband is in itself an indication that there was an abetment and criminal conspiracy between them within the meaning of Section 29 of the NDPS Act, 1985.

14. I have considered the submissions made by learned counsel for both the sides and have perused the scanned copy of the case record of Special NDPS Case No. 121/2022 including the scanned copy of the case diary of Bazaricherra P.S. Case No. 156/2022.

15. On perusal of the FIR, it appears that the seizure of contraband was made from eight separate bags belonging to four accused persons including the present petitioners and it has been specifically mentioned in the FIR as to from whose bag how much quantity of contraband was recovered. It also appears from the FIR, that from the two bags belonging to petitioner No. 1, namely,

Mohammad Majrul total 15 Kgs. of Ganja was recovered whereas, from petitioner No. 2, namely, Mohammad Beejal two bags containing 20 Kgs of "Ganja" was recovered. It appears that at this stage that apart from the fact that the petitioners were found in the same passenger carrying vehicle and were found carrying similar contraband, no other material could be shown to suggest that there was abetment or criminal conspiracy within the meaning of Section 29 of NDPS Act, 1985. Though, the petitioners were found together in the said vehicle, however, they were found carrying the bags individually from where the contraband was recovered and therefore as per the judgment of the Apex Court of India in the case of ***Amarsingh Ramjibhai Barot Vs. State of Gujarat (supra)***, at least *prima facie*, for the purpose of consideration of the instant bail application, there is no material to show that Section 29 is attracted in this case. Moreover, as the contraband found individually from the possession of the present petitioners is less than commercial quantity, this court is of the considered opinion that embargo of Section 37 of NDPS Act, 1985 would not be applicable in this case.

16. Further, as the petitioners have already been detained behind the bars for last one year, nine months and sixteen days, this Court is of considered opinion that they are entitled to get bail in this case.

17. In view of above reasons, the above-named petitioners are allowed to go on bail of Rs.50,000/- (Rupees Fifty Thousand only) each with two sureties of like amount and one of the surety may be a resident of the State of Assam, subject to the following conditions:-

- i. That the petitioners shall cooperate in the remaining part of the trial and shall appear before the Trial Court as and when so directed by the Trial Court without fail;

ii. That the petitioners shall not directly or indirectly make any inducement, threat or promise to any of the listed witnesses or any other person/persons who may be acquainted with the facts of the case so as to dissuade such persons from disclosing such facts during the trial;

iii. That the petitioners shall not indulge in any offence similar to that with which they are charged with in the instant case.

18. With the above observation, this bail application is hereby disposed of.

JUDGE

Comparing Assistant