

GAHC010015712024



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

Case No. : Bail Appln./240/2024

S. KAPANI
S/O P. SALEO
R/O VILL- SAHJOUBA,
P.S. TADUBI, DIST. SENAPATI, MANIPUR

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PP, ASSAM

Advocate for the Petitioner : MR. P BORDOLOI

Advocate for the Respondent : PP, ASSAM

**BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI**

ORDER

Date : 14.03.2024

Heard Mr. P. Bordoloi, learned counsel for the accused-petitioner as well as Mr. D.P. Goswami, learned Additional Public Prosecutor for the State.

2. This is an application filed under **Section 439 Cr.P.C.**, seeking bail

by the accused-petitioner, namely, **S. Kapani**, in connection with **NDPS case no 18/2023**, registered under **Section 21(C)/29 of NDPS Act** pending in the court of learned Special Judge, NDPS, Karbi Anglong, Diphu.

3. The case of the prosecution is that one SI of police of Dillai Police Station lodged an FIR on 26/10/2023 before the officer-in charge Dillai Police Station stating inter alia that a large quantity of suspected drugs were being transported in a car keeping the same concealed inside the vehicle. Accordingly the informant along with other police personnel conducted a Naka Checking duty on NH 36 near Dillai gate. At about 5 PM one Maruti 800 car bearing no AS01AE9207 and one Innova vehicle bearing no NL01CA0194 were intercepted which were coming from Manipur side. Upon search of both the vehicle 45 nos of identical soap boxes containing 573.11 gms of suspected heroine were recovered from the said maruti 800 car and driver of the said vehicle Sahajan Ahmed Barbhuyan was detained. From innova car 55 nos of soap boxes containing 690.13 gms of suspected heroine were also recovered and the occupants of said vehicle including the present petitioner were arrested.

4. Learned counsel for the petitioner has contended that the petitioner is the driver of the arrested accused person Daniel Kitharee and he was unaware of the fact that the said innova vehicle was carrying such contraband. He was arrested purely on suspicion. There is absolutely no ingredient of commission of any offence by the petitioner and the petitioner has already been in jail for more than one (1) year.

5. It is further submitted that the case is at the trial stage and out of sixteen (16) witnesses only three (3) witnesses have been examined. It is also submitted that the other co-accused were enlarged on bail.

6. According to the learned counsel for the petitioner, it is clear mandate of law that in case of prolonged incarceration, conditional liberty will override the statutory embargo u/s 37 of the NDPS Act. In the present case, the petitioner is behind the bar for more than one year and three months and many of the witnesses are yet to be examined. Therefore, considering this aspect of the matter, the petitioner may be enlarged on bail.

In support of his submissions learned counsel has placed reliance on the following case laws –

- a. (2023) Live law (SC) 533 (Rabi Prakash vs. State of Odisha)
- b. (1987) Cri.L.J 157 (Raghbir Singh and others vs. State of Bihar)
- c. Order dated 04/08/2022 in SLP criminal no 4173/2022 (Shariful Islam @Sarif vs. State of West Bengal)
- d. Order dated 04/05/2022 in SLP criminal no 5769/2022 (Nitesh Adhikari Vs State of West Bengal)
- e. Order dated 22/08/2022 in SLA criminal no 5530/2022 (Mohammad Salman Hanif Shaikh vs. State of Gujarat)
- f. Order dated 01/12/2023 passed in bail application no 3548/2023 (Bayar Deb Barma @ jakki and another vs. Union of India)
- g. Order dated 11/12/2023 passed in bail application no 2754/2023 (Deepak Chauhan vs. State of Assam)
- h. Order dated 20/12/2023 passed in bail application no 3676/2023 (W. Samarjit Meitei vs. State of Assam)
- i. Order dated 18/10/2023 passed in bail application no 3067/2023 (Moina Kachari @ tulashi and two others vs. State of Assam).

7. Learned Additional PP has vehemently opposed in granting bail to the petitioner by stating that commercial quantity of heroine was recovered from the vehicle in which the petitioner was travelling. Learned Additional PP also pointed out that PW 1 and 2 clearly mentioned in their evidence that the petitioner was inside the innova vehicle from which commercial quantity of heroine was recovered. There was no explanation from the side of the petitioner why such large quantity of heroine was kept concealed inside the soap boxes. Learned Additional PP therefore, prays not to release the accused/petitioner on bail.

8. I have considered the submissions of learned counsel for the parties. I have also perused the scanned copy of the trial court record.

9. Section 37 of NDPS Act, reads as follows –

“37. Offences to be cognizable and non-bailable.—

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974)—

(a) every offence punishable under this Act shall be cognizable;

(b) no person accused of an offence punishable for offences under section 19 or section 24 or section 27A and also for offences involving commercial quantity shall be released on bail or on his own bond unless—

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is

not guilty of such offence and that he is not likely to commit any offence while on bail.

(2)The limitations on granting of bail specified in clause (b) of subsection (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force, on granting of bail.

10. It is evident that no person can be enlarged on bail if he is found in possession of commercial quantity of Narcotic substances under NDPS Act unless the court comes to the conclusion that accused is not guilty of offence and prosecution has been given opportunity to oppose the bail application.

11. In the instant case, it is evident that the contraband items recovered from the vehicle in which accused/ petitioner was travelling are commercial quantity of contraband. There is no explanation from the side of the accused/petitioner, why such large number of contrabands was kept concealed in soap boxes inside the vehicle. The petitioner was not the driver but the passenger in the vehicle. Therefore, it cannot be stated that there are reasonable grounds to believe that the petitioner is not guilty of the offence and that he is not likely to commit any offence while on bail.

12. It is true that out of sixteen (16) witnesses four (4) witnesses have been examined and the accused has been detained in custody for last one (1) year, which cannot be the ground for granting bail. It also appears from the record that charge was framed on 10/06/2023, prior to that several dates were taken by the accused persons including the petitioner for hearing on framing of charge. Thereafter, four witnesses were examined. Under such backdrop, it cannot be said that there was delay in the proceeding of the

case. Apart from that now the law is clear that detail appreciation of evidence cannot be done at the time of considering the bail in heinous offence. It is not a case that there is nothing incriminating spoken by witnesses examined so far.

13. In view of the above, this court does not find any reason to believe that there are reasonable grounds for believing that the accused/petitioner is not guilty of such offence for which he has been charged.

14. In the result, bail application is rejected. However, learned Trial court is directed to expedite the trial of the case.

15. Bail application is disposed of accordingly. The order is confined only to consider the bail application and not on merit of the case.

JUDGE

Comparing Assistant