

GAHC010063402023



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

Case No. : Bail Appln./1105/2023

ABDUL JALIL
S/O LT. NUR UDDIN
VILL- DURLABPUR
P.S. PATHERKANDI,
DIST. KARIMGANJ, ASSAM

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 : 14.08.2023

- 1.** Heard Mr. A. Ahmed, learned counsel for the petitioner. Also heard Mr. D. Das, 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, *Abdul Jalil*, who has been detained behind the bar since last 14.08.2022 (365 days) in connection with Special

(NDPS) Case No. 119/2022 corresponding to Patharkandi P.S. Case No. 205/2022 under Section 22(C)/25/29 of the NDPS Act, 1985 pending before the Court of learned Sessions Judge, Karimganj.

3. The accusation in this case is that on the basis of FIR lodged by one R.P. Singh, S.I. of Patharkandi Police Station on 13.08.2022, recovery of commercial quantity of suspected Yaba tablets were made from the possession of present petitioner and Patharkandi P.S. Case No. 205/2022 was registered and investigation was initiated.

4. During the course of investigation, the present petitioner was arrested on 13.08.2022 and on 14.08.2022, he was remanded to judicial custody. Thereafter, charge-sheet was laid against the present petitioner in this case. It is the case of the present petitioner that charge-sheet was not laid within a period of 180 days from the date of remand of the present petitioner and, hence, he is entitled to get default bail under Section 167(2) Cr.P.C. read with Section 36A(4) of the NDPS Act, 1985.

5. The learned counsel for the petitioner has submitted that the present petitioner was remanded to judicial custody on 14.08.2022 and he completed 180 days of detention on 9th February, 2023, hence, according to learned counsel for the petitioner, the present petitioner was entitled to be released on bail after 9th February, 2023 as according to learned counsel for the petitioner on the said date, the charge-sheet was not laid.

6. In support of his submissions, learned counsel for the petitioner has pointed that on 10th February, 2022, the present petitioner had moved a bail application before the Court of learned Special Judge, Karimganj which was fixed for consideration on 13th February, 2023 and in the said order it is

reflected that "*as reported, the charge-sheet in this case is laid*".

7. The learned counsel for the petitioner has laid emphasis on the word "*as reported*" used by learned Special Judge in the order dated 13.02.2023 to impress upon this Court that the charge-sheet was not before the learned Special Judge, when the order dated 13.02.2023 was passed, otherwise, the learned Court would not have used the word "*as reported*" in its order.

8. Further, it also appears that as per order of this Court the scanned copy of the Register of charge-sheet maintained in the PI Office, Karimganj Court for the month of February, 2023 along with Register of charge-sheet of NDPS Cases maintained by the Office of the Special Judge, Karimganj for the month of February, 2023 was requisitioned and learned counsel for the petitioner submits that on perusal of the PI Register, it shows that the PI Register does not contain any signature of the Magistrate. Similarly, it is also submitted that the Register of NDPS cases maintained in the Office of the learned Special Judge, Karimganj does not contain any seal/signature of Presiding Officer. This according to learned counsel for the petitioner is in violation of provisions of Rule 38, Part-IV of the Assam Police Manual as well as direction issued by this Court in "***Samsun Noor @ Samsul Noor –Vs- The State of Assam***" reported in "***(2022) 5 GLT 405***".

9. The learned counsel for the petitioner has also submitted that though by order dated 07.02.2023, learned Special Judge has stated that charge-sheet has been submitted under Section 22(C) of the NDPS Act against the present petitioner, namely, *Abdul Jalil*. However, it is submitted in the CIS i.e. Case Information System maintained by the Gauhati High Court, the entry of 07.02.2023 against the Special(NDPS) Case No. 119/2022 has been missing which creates suspicion as to whether the order dated 07.02.2023 was passed

on that day or whether it was subsequently passed.

10. On the other hand, learned Additional Public Prosecutor has submitted that in view of categorical mentioned in the judicial order dated 07.02.2023 passed by learned Sessions Judge, Karimganj in Special(NDPS) Case No. 119/2022, there appears no doubt that charge-sheet in the said case was submitted on or before 07.02.2023 and, hence, the present petitioner is not entitled to get the benefit of default bail under Section 167(2) Cr.P.C read with Section 36A(4) of the NDPS Act.

11. I have considered the submissions made by learned counsel for both sides and have perused the materials on record including the scanned copy of case record of Special(NDPS) Case No. 119/2022 as well as scanned copy of the Register maintained by the Office of the Sessions Judge, Karimganj.

12. On perusal of the scanned copy of the Register maintained by the Office of the Sessions Judge, Karimganj, it appears that the charge-sheet No. 265/2022 dated 30.11.2022 in Special(NDPS) Case No. 119/2022 was received on 07.02.2023. However, it is also seen that no seal has been put under the signature of the person who have put his signature on the remark column of the said Register. Similarly, it also appears that in the scanned copy of the Register maintained in the PI office of the Karimganj Court that the charge-sheet No. 265/2020 was received on 06.02.2023 at 6.15 p.m. at the PI Office Court. However, there appears no signature or seal as required under Rule 38 Part-IV of the Assam Police Manual and as directed by this Court in "***Samsun Noor @ Samsul Noor*** (supra).

13. The question before this Court is as to whether the present petitioner is entitled to get statutory bail and for deciding the said question, it is to be

ascertained as to whether on or before 09.02.2023 i.e. the date when the present petitioner had completed 180 days of detention behind the bar, charge-sheet was submitted before the Court or not. Though, it appears from the Registers maintained in the PI Court as well as in the Court of Sessions Judge, Karimganj that charge-sheet has shown to be laid before the Court on 7th February, 2023 and it has shown to be submitted before the Office of the Prosecuting Inspector, Karimganj Court in the evening of 6th February, 2023, same also appears on perusal of the order dated 07.02.2023 passed by learned Sessions Judge, Karimganj in Special (NDPS) Case No. 119/2022. Though, it also appear that ate charge-sheet and the Registers were not signed in the manner prescribed which raises doubt regarding the date of submission of the charge-sheet. However, in view of the judicial order dated 07.02.2023 passed by learned Sessions Judge, Karimganj in Special (NDPS) Case No. 119/2022 which categorically states that the charge-sheet is submitted under Section 22(C) of the NDPS Act against the accused persons, it leaves no doubt that charge-sheet was there before the learned Sessions Judge, Karimganj two days prior to lapse of 180 days of detention of the present petitioner and as the said judicial order has not been challenged, this Court relies on the same to come to a conclusion that charge-sheet was there before the learned Sessions Judge, Karimganj which had passed order dated 07.02.2023 wherein it has categorically stated that charge-sheet is submitted under Section 22(C) of the NDPS Act.

14. In view of the above, this Court is constrained to hold that the present petitioner is not entitled to statutory bail under Section 167(2) Cr.P.C. read with Section 36A(4) of the NDPS Act, 1985

15. However, before parting, the learned Sessions Judge, Karimganj is hereby

directed to ensure strict compliance of the directions of this Court passed in "***Samsun Noor @ Samsul Noor*** (supra) henceforth, whenever, charge-sheet is submitted in the Office of the Courts under jurisdiction of said Sessions Court.

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

17. Let a copy of this order be also sent to the Court of learned Sessions Judge / learned Special Judge, Karimganj.

JUDGE

Comparing Assistant