

GAHC010121572023



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

Case No. : Bail Appln./1965/2023

ABUL KASHEM
S/O SRIMAT ALI
R/O VILL- SRIMANTAPUR
P.S.SONAMURA,
DIST. SEPHAIJALA. TRIPURA

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 AJIT BORTHAKUR

ORDER

Date : 28.06.2023

Heard Mr. A. Ahmed, learned counsel for the accused petitioner. Also heard Mr. B.B. Gogoi, learned Addl. P.P., Assam appearing for the State respondent.

By this petition under Section 439 Cr.P.C., the accused petitioner, namely **Abul Kashem** has prayed for grant of bail in connection with **Special (NDPS Case No.)**

160/2022 pending in the Court of learned Special Judge, Karimganj corresponding to **Bazaricherra P.S. Case No.196/2022** under Sections **22(b)(ii)(c)/25/29** of the N.D.P.S. Act, 1985.

The scanned copy of case record, as called for, is placed before the Court.

Mr. A. Ahmed, learned counsel for the accused petitioner, submits that the accused, who is the registered owner of the seized truck, has been languishing in jail for about 60 days despite being innocent. Mr. Ahmed further submits that as per order, dated 10.02.2023, passed by the learned Special Judge, Karimganj in the zimma petition and on receipt of notice u/s 67 of the N.D.P.S. Act the accused appeared before the investigating officer to produce his documents pertaining to ownership of the seized vehicle, on 06.04.2023, but on appearance, without paying heed to the explanation in regard to use of his vehicle, the investigating officer arrested him on mere suspicion of his involvement. Mr. Ahmed also submits that in the facts of the case cited in the charge-sheet, the investigating officer clearly cited that there is *prima facie* case against the co-accused persons without referring to the possible involvement of the owner of the vehicle.

Per contra, Mr. B.B. Gogoi, learned Addl. Public Prosecutor, submits that the case records reveal that the learned Special Judge, Karimganj after examining the documents on record and hearing of both sides, having found *prima facie* material framed charges under Sections 20(b)(ii)(c)/25/29 of the N.D.P.S. Act against all the accused persons and presently the case is pending for evidence of the prosecution side for which purpose, the summons have been issued. Therefore, Mr. Gogoi submits that in view of the bar in Section 37 of the N.D.P.S. Act, the bail application of the accused may be rejected.

The case relates to recovery and seizure of 69 Nos. of packets weighing 404 Kgs. of suspected Ganja (Cannabis) from a truck bearing Registration No. TR 01B 1747 during Naka checking.

It appears that the accused petitioner has been in judicial custody since 06.04.2023, that is, for 60 days.

A perusal of the case record, it is revealed that the learned trial Court has framed charges under Sections 20(b)(ii)(c) of the N.D.P.S. Act vide order, dated 09.06.2023 and thereafter, none of the prosecution witnesses numbering 10(ten) is examined.

A part charge-sheet was submitted against three accused persons vide order, dated 28.03.2023 and thereafter, the investigating officer arrested and forwarded the present accused in connection with the case vide order, dated 06.04.2023 and further, the learned Special Judge, Karimganj accepted the report of the investigating officer filed under Section 173 (8) CrPC, dated 13.05.2023 as part of the original charge-sheet. The present accused has been implicated in the case on the basis of the statutory provision under Section 29 of the NDPS Act.

In view of the above reasons, the bail application stands rejected.

It is, however, provided that the accused shall have liberty to file fresh bail application, if so advised and if such bail application is filed, the same shall be disposed of by the learned court below at an appropriate stage of trial in accordance with law.

In view of the ratio of the decisions rendered by the Hon'ble Supreme Court in *Mohd. Muslim @ Hussain _vs- State (NCT of Delhi)*, reported in 2023 SCC OnLine SC 352 and *Shariful Islam @ Safi -vs- The State of West Bengal* in Special Leave to Appeal (Crl.) No.4173/2022, it is provided that the learned court below shall expedite the trial of the case, if deemed necessary by fixing a calendar of hearing and for this purpose to summon the most material witnesses essential to the defence case of the present accused petitioner.

This disposes of the bail application.

JUDGE

Comparing Assistant