

GAHC010143872023



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

Case No. : Bail Appln./2318/2023

TAJ UDDIN
S/O MOINUL HOQUE
R/O BATOIYA
P.S.NILAMBAZAR
DIST. KARIMGANJ, ASSAM

VERSUS

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

Advocate for the Petitioner : MR H R A CHOUDHURY

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA

ORDER

18.10.2023

Heard Mr. A Ahmed, learned counsel for the accused petitioner. Also heard Mr. P.S Lahkar, learned Addl. PP for the State.

2. This bail application has been filed by the petitioner, namely, **Taj Uddin** seeking bail in connection with **Special (NDPS) Case No. 159/2022** arising

out of Bazaricherra P.S. Case No. 197/2022 under Sections 21(C)/25/29 of the NDPS Act.

3. By an FIR dated 12.11.2022 lodged by the informant one SI Jyoti Prasad Das alleging that on 11.11.2022 upon receiving information from Addl. SP (Hq), Karimganj that one suspected person who was driver of a Mahindra Bolero bearing registration No. MZ 01G 3542 was supposed to traffic a huge quantity of drugs concealed in his vehicle from Mizoram and transported to Bangladesh via Assam. At the designated place, they saw the vehicle was arriving which was intercepted and found one driver inside the vehicle. Immediately the vehicle was cordoned off and the driver was asked to come down. In the presence of independent witnesses, the vehicle was thoroughly searched and the contraband narcotics drugs which were concealed inside the secret chamber under the floor in the sit of the vehicle were recovered. A total of 117 Nos. of soap cases containing suspected heroine inside the plastic bag. Amongst the items seized from the car, one sale-deed relating to vehicle No. MZ 01G 3542 vide certificate No. IN-AS25567898559314U was also seized. On spot interrogation, while apprehending, the driver stated that the seized contraband drugs belonged to one Nazim Uddin and his elder brother Jamal Uddin. It was stated by the driver that another set of persons who were travelling in a vehicle bearing No. AS 10D 5131 were also involved. On the information received from the arrested driver, the said vehicle was also seized at another place, although the inmates and the driver of that vehicle escaped taking advantage of darkness. This FIR was received and registered as BCR PS Case No. 197/2022 under Sections 21(c)/25/29 of the NDPS Act. Pursuant to the registration of the FIR, the petitioner was arrested.

4. The learned counsel for the petitioner submits that he was the owner of

the vehicle bearing registration No. MZ 01G 3542. But the vehicle was sold to one Abul Hussain vide the sale deed dated 03.09.2022 though the official formalities regarding transfer of the vehicle is pending. It is further submitted that the vehicle was neither under the possession of the petitioner since the day it was sold i.e. 03.09.2022. The learned counsel for the petitioner submits that he is not connected with any of the offences alleged. The only ground he was arrested was that he was the owner of the vehicle although the said fact is belied as the vehicle was already sold on 03.09.2022. Therefore as the trial has commenced his further custodial detention is not at all necessary and his prayer for bail be granted.

5. The scanned copy of the LCR called for from the Court of Special Judge, Karimganj has been received.

6. The learned counsels for the parties have been heard. The bail petition has been perused. The scanned copy of the LCR received has also been carefully perused.

7. From the LCR, it is seen that as per the status report given, charge has not yet been framed and therefore no deposition of witnesses has taken place as on date.

8. The bail petition preferred by the other co-accused along with the petitioner has earlier been rejected by the learned Trial Court. In connection with offences relating to NDPS Act, the mandate of Section 37 of the NDPS Act is required to be taken note of. Section 37 of the NDPS Act reads as under:

“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 34 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 satisfied 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 sub-section (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].”

9. In *Union of India vs. Nawaz Khan*, reported in (2021) 10 SCC 100, the Apex Court held that the tests which the High Court is required to apply while granting bail is to satisfy itself whether there are any reasonable grounds to arrive at a prima facie satisfaction that the trial may not result in the conviction of the accused. That apart, the High Court will also have to arrive at a satisfaction the accused will not commit similar offences while on bail. The Apex Court held the in view of the seriousness of the offences punishable under the NDPS Act, stringent parameters for grant of bail under NDPS Act has been prescribed.

10. The learned counsel for the petitioner has referred to an order the Apex Court rendered in *Balwinder Singh Vs. Asstt. Commissioner, Customs and Central Excise*, reported in (2005) 4 SCC 146. In the said case, the appellant before the apex Court was convicted solely on the ground that he was the owner of a vehicle which he had sold at the relevant point in time, however, the registration was not changed. The appellant was convicted solely for the reason that he was a registered owner of the said vehicle. The apex Court held that

there is no evidence to prove that he knowingly allowed any person to use the vehicle for any illegal purpose. Under such circumstances, the Apex Court held that there was no evidence to prove the conspiracy set up by the prosecution and in the result the appeal was allowed and the appellant was acquitted of all charges.

11. Having notice the Judgments referred above and taking note of the arguments of the learned Sr. Counsel for the petitioner that the facts of the present case are similar to the matter which was before the Apex Court in Balwinder Singh (Supra) and it is seen that in the case of Balwinder Singh (Supra), the order was passed by the Apex Court in an appeal against conviction. The Apex Court upon perusal of the evidence held that there was no clear evidence toward the guilt of the appellant therein.

12. As discussed above, from the scanned copy of the LCR, it is seen that even the charges have not been framed and therefore no deposition of the witnesses have taken place as yet. Under such circumstances while the Judgment of the Apex Court in Balwinder Singh (Supra) is respectfully taken note of, the fact remains that as on date in the absence of any deposition by any of the witnesses recorded by the learned trial Court, there is no evidence available before this Court to atleast to take a prima facie view that there are no materials towards the guilt of the petitioner and as such the bar under Section 37 NDPS Act will operate as the twin conditions prescribed under Section 37 is not satisfied.

13. Under such circumstances, this Court rejects the bail petition as there is no evidence available for arriving at a prima facie satisfaction by this Court as required under Section 37. The learned Trial Court is requested to expeditiously proceed with the matter.

14. Accordingly, the bail petition stands rejected at this stage as for the reasons above.

JUDGE

Comparing Assistant