

GAHC010156422023



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

Case No. : Bail Appln./2540/2023

JAMAL UDDIN
S/O SIRAJ UDDIN
R/O VILL- KABOL DHUBRI
P.S. NILAMBAZAR
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 ARUN DEV CHOUDHURY

ORDER

29.11.2023

1. Heard Mr. A. Ahmed, learned counsel for the petitioner. Also heard Mr. D. Das, learned Additional Public Prosecutor for the State of Assam.
2. This is an application made under Section 439 Cr. P.C. seeking bail by

the accused/petitioner, namely, **Jamal Uddin**, who was arrested on 02.05.2023 in connection with Bazaricherra PS Case No. 197/2022 registered under Sections 21(C)/25/29 of the Narcotic Drugs and Psychotropic Substances Act, 1985.

3. Subsequently, the Investigating Authority after completion of the investigation, submitted Charge Sheet and now, the matter is pending for trial being Special (NDPS) Case No. 159/2022 before the learned Court of Special Judge, Karimganj.
4. As per the prosecution version, on 11.11.2022, on the basis of secret information, a vehicle bearing Registration No. MZ 01 G 3542 was checked and contraband (suspected to be heroin) weighing 1434.53 grams were recovered from the aforesaid vehicle concealed in 170 nos. of soap cases. It is the further allegation that the aforesaid vehicle was escorted by another vehicle bearing registration No. AS 10D 5131 and the driver of the vehicle bearing registration No. MZ 01 G 3542 was arrested.
5. The said driver during his statement recorded under Section 161 Cr.P.C. confessed that his vehicle carrying the contraband narcotics was escorted by the other vehicle and by Nazim Uddin, Salim Uddin and Jamal Uddin. On the basis of such confessional statement, the said Nazim Uddin and Salim Uddin were arrested.
6. According to the prosecution, the accused Jamal Uddin i.e. the present petitioner was absconding and subsequently, he was arrested 02.05.2023 and after his arrest, the investigation was completed and charge-sheet was filed on 07.05.2023.

7. In the meantime, the two accused persons namely, Nazim Uddin and Salim Uddin were granted bail by the learned trial Court considering the fact that the said two accused persons have been arrested only on phone tracking and the disclosure statement to the police by the driver Shamil Uddin inasmuch as such statement recorded by the police is hit by Section 25/26 of the Indian Evidence Act, 1872 and does not also attract of the provision of Section 53(A) of the NDPS Act, 1985. The further consideration was that the said two accused persons were in custody for 47 days. The Court also opined on the basis of the material available on record that the said two accused persons prima facie cannot be said to be guilty of the aforesaid offences, or likely to commit any similar offence. However, subsequently, the prayer for bail of the present petitioner was rejected by the learned trial Court under its order dated 19.05.2023 on the ground that the materials available on record suggest that the accused Jamal Uddin entered into a conspiracy with co-accused to commit the alleged offence and therefore, a case under Section 29 of the NDPS Act, 1985 is made out.
8. Mr. Ahmed, learned counsel arguing for grant of bail submits that in view of the determination made by the Hon'ble Apex Court in the case of **State –Vs- Pallulabid Ahamed Arimutta & Others** reported in **2022 12 SCC 633**, the ratio laid down in the case of **Tofan Singh –Vs- State of Tamil Nadu** reported in **(2021) 4 SCC 1**, regarding value of confessional statement recorded under Section 67 of the NDPS Act, such statement shall remain inadmissible even at the stage of consideration of the bail. Therefore, in view of such settled propositions of law, the petitioner is entitled for grant of bail.

9. Mr. Ahmed, learned counsel for the petitioner further contends that in view of a decision of the Hon'ble Apex Court in the case of **Narcotics Control Bureau –Vs- Mohit Agarwal** reported in **(2022) SCC Online SC 891**, the reasonable ground for consideration of bail expressed under Section 37 of the NDPS Act would mean credible and plausible grounds for the court to believe that the accused person is not guilty of the alleged offence. According to Mr. Ahmed, learned counsel, in the present case, on the face of the record, no such grounds are available and therefore, even in terms of the Section 37 of the NDPS Act, the petitioner is entitled for bail.
10. Per contra, Mr. Das, learned Additional Public Prosecutor for the State of Assam submits that the question of parity so far relating to grant of bail to the other accused persons is not applicable in the present case inasmuch as those persons were arrested during the course of investigation and the investigation was at very early stage at that point of time, and subsequently, the investigating authority has collected the sufficient materials to implicate the present petitioner in commission of an offence under Section 29 of the NDPS Act, 1985 inasmuch as the material so far collected clearly established that the present petitioner entered into a conspiracy with the main accused i.e. driver of the vehicle bearing registration No. MZ 01 G 3542, which is evident from the case record etc.
11. I have given anxious consideration to the submissions advanced by the learned counsel for the parties. Also perused the materials available on record.
12. There is no quarrel on the point that Clause-b of Sub Section 1 of the Section 37 of the NDPS Act, 1985 mandates that before granting a bail, the

Court is to have a satisfaction that there is reasonable grounds to believe that the accused is not guilty in commission of the offence.

13. It is also equally well settled that the expression "reasonable grounds" would mean credible and plausible grounds for the court to believe that the accused person is not guilty of the alleged offence.
14. Coming to the case in hand and the material available on record, it is seen that the basic grounds for implicating the present petitioner are two fold, firstly, the present petitioner is the brother of Nazim Uddin who has already been granted bail by the learned trial Court below as discussed hereinabove and secondly, there were CDRs to suggest his involvement.
15. From the material available on record, if we take it on its face value and treat it to be correct, it is seen that the ground for implicating the petitioner is the confession of the prime accused that the petitioner escorted him from Mizoram to the place of seizure. The call details as collected by the investigating authority also reflects call records are between the Salim Uddin, Nazim Uddin and the prime accused Shamil Uddin i.e. driver. From the record, it is seen that no material has been brought to show that there is CDR having call details either between Salim Uddin and the present petitioner or between Nazim Uddin and the present petitioner or between the prime accused i.e. Shamil Uddin, the driver and the petitioner.
16. That being the position and in view of the ratio laid down in the case of **Pallulabid Ahamed Arimutta** (supra), that a confessional statement recorded under Section 67 of the NDPS Act, 1985, will remain inadmissible in the trial of an offence under the NDPS Act and therefore, such

statement, more particularly confessional statement/voluntary statement of the co-accused cannot be a ground to have a reasonable belief that the accused is guilty of the offence.

17. For the reasons, discussed hereinabove, this Court is of the view that the petitioner has been able to make out a prima facie case that there is no plausible ground to believe that petitioner is guilty of any offence under Section 29 of the NDPS Act, 1985.
18. Now, coming to the other aspect of the matter regarding the satisfaction that there is no likelihood of the petitioner committing any further similar offence, this Court is of the view that such anxiety of the prosecution can be redressed if stringent conditions are imposed while granting bail.
19. In the aforesaid background, to balance the stringent condition of the NDPS Act, 1985 and the right of the petitioner under Article 21 of the Constitution of India, in the considered opinion of this Court, the petitioner can be released on bail with stringent conditions to ensure that the petitioner does not commit any such similar offence while on bail.
20. In view of the peculiar facts and circumstances of the case, the petitioner namely **Jamal Uddin**, be released on bail on executing a bail bond of Rs. 1,00,000/- (One lakh) with two suitable solvent sureties of like amount to the satisfaction of the learned Special Judge, Karimganj, Assam in connection with aforementioned case. The bail granted to the petitioner shall be subject to following conditions:-

- (a) The petitioner shall not leave the territorial jurisdiction of learned Special Judge, Karimganj, Assam, without prior written permission

from him;

- (b) The petitioner shall not hamper and tamper with the evidence of the case;
- (c) The petitioner shall not directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer.
- (d) The petitioner shall surrender his passport, if any (if not already surrendered) before the learned Special Judge, Karimganj, Assam.
- (e) The petitioner shall not try to contact any of the witnesses by any mode including telephone, social media etc.
- (f) The petitioner shall furnish the present residential address with proof to the learned trial Court below and shall not change the said residence without prior permission of the learned trial Court.
- (g) The petitioner shall appear before the Officer-in-Charge of Bazaricherra Police Station, on the 1st day of every week.
- (h) The petitioner shall appear before the learned trial Court below on each and every date of appearance during trial.

In the aforesaid terms, this bail petition is allowed.

JUDGE

Comparing Assistant