

GAHC010160952022



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

Case No. : Crl.Pet./798/2022

AMIT KUMAR DEBBARMA
SON OF NAGENDRA DEBBARMA,
R/O VILL- KUNJABAN, P.S. KALYANPUR,
DIST. KHOWAI, WEST TRIPURA, TRIPURA- 799203

VERSUS

THE STATE OF ASSAM AND ANR.
REP. BY THE PP, ASSAM

2:SI (UB) LAURENCE ZOUTE
SON OF LATE P ZOSIASAND ZOUTE

2ND OFFICER
BAZARICHERRA POLICE STATION
DIST. KARIMGANJ
ASSA

Advocate for the Petitioner : MR. DITUL DAS

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE AJIT BORTHAKUR

ORDER

Date : 22.08.2023

Heard Mr. D Das, learned counsel for the petitioner. Also heard Mr. B.B.Gogoi, learned Addl. Public Prosecutor for the State/respondent.

By this petition under Section 482/397/401 of the Cr.P.C. , the petitioner has prayed for setting aside/ quashing/ modification of Charge with one Head dated 13.12.2021 and order, dated 13.12.2021 under Section 20 (C) of the NDPS Act against the petitioner in Special Case (NDPS) No.109/2021 by learned Sessions Judge, Karimganj.

The FIR reveals that on 03.09.2021, during a Naka checking at Churaibari, NH-08, the informant and his staff recovered and seized 3.407 Kgs of Ganja from the possession of the petitioner.

Mr. D Das, learned counsel for the petitioner submits that in connection with aforesaid case, after conclusion of investigation, charge-sheet was filed under Section 20 (C) of the NDPS Act against the petitioner and thereafter, being committed the case to the learned Sessions Judge, Karimganj, learned court below framed charge under Section 20 (C) of the Act. Mr. Das also submits that although the case was originally registered under Section 20 (A) and charge-sheet was also laid under section 20 (A) of the Act, framing of charge under Section 20 (C) by the learned trial court is *prima facie* illegal. Mr. Das further submits that as the quantity of contraband item seized from the petitioner involves lesser than commercial quantity, hence a charge under Section 20 (B) of the NDPS Act would be appropriate in the case and as such, Mr. Das prays that the order, dated 13.12.2021 may be set aside and quashed.

It may be noted here that all that is required at charge framing stage is to see whether *prima facie* case has been made out or not. Charge can be amended at any stage during the trial or alternative charge can also be framed if the evidence so permits by affording proper opportunity to accused. Here is the case of recovery of 3.407 Kg of cannabis (Ganja) allegedly from the possession of the petitioner which is of intermediate quantity under the NDPS Act. The F.S.L. report shows that the sample of the seized substance gave positive tests for cannabis (Ganja). The aforesaid quantity of cannabis being above small quantity of cannabis and below commercial quantity, the charge may be modified to Section 20 (b) (ii) (B) of the NDPS Act.

Accordingly, the learned trial court shall modify the impugned charge, dated

13.12.2021, so that it does not prejudice the defence case.

With the above direction, the criminal petition stands disposed of.

JUDGE

Comparing Assistant