

GAHC010204602023



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

Case No. : Bail Appln./3234/2023

SAHAJAN UDDIN @ SAHJAHAN UDDIN
S/O AKRAM ALI
R/O VILL- SOUTH KEUTI
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 ARUN DEV CHOUDHURY

ORDER

Date : 30-11-2023

1. Heard Mr. A Ahmed, learned counsel for the applicant and Mr. D Das, learned Addl. PP, appearing for the State of Assam.
2. The present application is filed by the applicant, namely, Sahajan Uddin @ Sahjahan Uddin, who has been in custody since

07.05.2022 in connection with Patharkandi PS Case No.130/2022 registered under section 21(C)/25/29 of NDPS Act, 1985.

3. Subsequently after the completion of investigation, the investigating officer filed charge sheet arraying the present applicant as accused. At present the trial is going in Special NDPS Case No.74/2022 and in the meantime four witnesses out of ten witnesses have been examined. Till now the prosecution has examined two independent seizure witnesses, the informant and the driver of the police team.

4. From the FIR it is seen that it is the case of the prosecution that on receiving certain information they searched the house of one Abdul Fatah and recovered and seized the contraband. It is their further case that the house belongs to Abdul Fatah and Abdul Salek who are brothers and that the present applicant namely Sahajan Uddin @ Sahjahan Uddin was also present at the place of occurrence and he is also involved in dealing and transporting the banned contraband. Accordingly, these three persons were arrested from the place where the alleged seizure of contraband was made i.e., from the premises of Abdul Fatah and Abdul Salek.

5. The independent seizure witness in their examination in chief and cross examination has affirmed that they were brought as independent witnesses and they witnessed the recovery of the contraband from the cowshed of joint house of Abdul Fatah and Abdul Salek. However, they have deposed that the present applicant namely Sahajan Uddin @ Sahjahan Uddin was brought subsequently to the place of occurrence by the investigating authority, whose house is 1

km away from the place of occurrence. The informant (police officer) in his deposition stated that they had information regarding the banned contraband so far relating to Abdul Fatah, and on the basis of spot interrogation of the other two accused persons, they could learn that the present applicant is also involved in the trade. Thus from the aforesaid, it is seen that the involvement of the applicant is on the basis of the disclosure statement made by the co accused.

6. From the evidence it is also seen that the contrabands were allegedly recovered from the cowshed of Abdul Fatah and Abdul Salek and that the present applicant namely Sahajan Uddin @ Sahjahan Uddin was brought to the place subsequent to the recovery. In that view of the matter, this Court is of the view that a doubt so far the recovery from the present applicant is created and foundational fact of conscious possession relating to the present applicant is not there.

7. Considering the above, this court is of the view that further custodial detention of the applicant may not be necessary in terms of section 37 of the NDPS Act.

8. Now coming to the next question whether there is any likelihood of the applicant involving in the similar offences, this court is of the view that such anxiety of the prosecution can be addressed if stringent condition is imposed on releasing the applicant on bail.

9. Accordingly, it is directed that the applicant, above named, in connection with the aforementioned case be released on bail on his furnishing a bond in the sum of Rs.1,00,000/- (Rupees one lakh only) with two local sureties of the like amount to the satisfaction of the learned Special Judge, Karimganj, with the following conditions:

- I. The applicant shall not leave the territorial jurisdiction of the Special Judge, Karimganj without prior written permission from him/her;
- II. The applicant shall not hamper with the investigation of the case and tamper with the evidence of the case;
- III. The applicant 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 them from disclosing such facts to the court or to any police officer.
- IV. The applicant shall surrender his passport, if any, (if not already surrendered) before the Special Judge, Karimganj;
- V. The applicant shall not try to contact any of the witnesses by any mode including telephone, social media etc;
- VI. The applicant shall furnish the present residential address with proof to the Investigating Officer as well as to the learned trial Court below and shall not change the said residence without prior permission of the learned trial court.
- VII. The applicant shall appear before the O.C of Patharkandi PS on the 1st day of every week.
- VIII. The applicant shall appear before the learned trial court below on each and every date of appearance during trial.
- IX. The applicant shall not indulge in any activity of similar nature in the future.
10. In terms of the above, this bail application stands disposed of.
11. While parting with the record it is made clear that the aforesaid observations made by this court is a tentative view and only

for considering the present bail application and should not be treated as any comment on the merit of the case either of the prosecution or of the defence.

JUDGE

Comparing Assistant