

GAHC010213902023



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

Case No. : Bail Appln./3424/2023

SHAMIL UDDIN
SON OF- SHAYAB ALI, RESIDENT OF VILL.- KABUL (DHUBRI), P.S.-
NILAMBAZAR, DISTRICT- KARIMGANJ, ASSAM

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

Advocate for the Petitioner : MR. L R MAZUMDER

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

Date : 21.12.2023

- 1.** Heard Mr. L. R. Choudhury, learned counsel for the petitioner. Also heard Mr. D. Das, learned Additional Public Prosecutor for the State of Assam.
- 2.** This application under section 439 of the Code of Criminal Procedure, 1973 has been filed by the petitioner, namely, Shamil Uddin who has been

detained behind the bars since 13.11.2022 (for last 404 days) in connection with Special (NDPS) Case No. 159/2022 pending before the Court of learned Special Judge, Karimganj.

3. Learned counsel for the petitioner has submitted that one of the co-accused namely, Jamal Uddin has been released on the bail by one of the Co-ordinate Bench of this Court and on the ground of parity the petitioner also has preferred bail in this case.

4. The learned counsel for the petitioner has also submitted that the petitioner has been detained behind the bars for last 404 days, however, not even a single witness has been examined till today.

5. On the other hand, learned Additional Public Prosecutor submits that the contraband seized in this case is of commercial quantity and charge against the petitioner has been framed under Section 21(c)25/29 of the NDPS Act, 1985 and the co-accused which was allowed to go on bail has failed to appear before the trial court on the date fixed for recording of evidence before the Trial Court.

6. I have considered the submissions made by both the parties and perused the material on record.

7. It appears from the order dated 29.11.2023 passed in Bail Application No. 2540/2023, the Co-ordinate Bench of this Court has made an observation while granting bail to the co-accused that the petitioner is prime accused in this case and he is the driver of the vehicle from which the seized contraband was recovered,

8. As there are materials against the present petitioner on record, at this stage it is difficult to own an opinion that there are no reasonable ground to believe that he is not guilty of offence with which he is charged in this case and therefore, the embargo of section 37 of the NDPS Act, 1985 is applicable to the

case of the present petitioner.

9. As regards the period of detention already undergone, it appears that the petitioner has been detained behind the bars only for 404 days which in the considered opinion of this Court is not long enough to over ride the embargo of Section 37 of the NDPS Act.

10. For the reasons stated the prayer for bail of the present petitioner, namely, Shamil Uddin is hereby rejected at this stage.

JUDGE

Comparing Assistant