

GAHC010214202023



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

Case No. : Bail Appln./3407/2023

KAJAL AHMED @ JAHIR
S/O- BASAR UDDIN, VILL- TALTOLA, PS- KARIMGANJ, DIST.- KARIMGANJ,
ASSAM

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PP, ASSAM

Advocate for the Petitioner : MR H R CHOUDHURY

Advocate for the Respondent : PP, ASSAM

- B E F O R E -

HON'BLE MR. JUSTICE MRIDUL KUMAR KALITA
ORDER

19.12.2023

Heard Mr. H.R. Choudhury, learned counsel for the petitioner. Also heard Mr. D. Das, learned Additional Public Prosecutor, Assam.

This application under Section 439 of the Code of Criminal Procedure, 1973 has been filed by the petitioner, namely, Kajal Ahmed @ Jahir, who has been detained behind the bars since 26.06.2023, i.e. for last 177 days in connection with Special (NDPS) Case No.75/2023 in connection with RK Nagar P.S. Case No.93/2023 under Sections 21(c)/25/29 of The Narcotic Drugs and

Psychotropic Substances Act, 1985 (in short, NDPS Act).

The gist of accusation in this case is that on 26.06.2023, one Nilov Jyoti Nath had lodged an FIR before the Officer-In-Charge of Ramkrishna Nagar Police Station at Karimganj, *inter-alia*, alleging that an information was received from one Patha Pratim Das, Superintendent of Police, Karimganj over telephone on 25.06.2023 that a huge quantity of drugs was being transported from Hailakandi to Karimganj and accordingly, a team of police staff proceeded towards Ishancherra to conduct a *naka* checking and during the naka checking process, one vehicle was intercepted which was driven by one Ahad Uddin who was accompanied by one Makbul Hussain. During the search of the said vehicle, 200 Nos. of soap cases containing suspected heroin were found from the said vehicle. The total weight of the seized heroin was found to be 2 kg 272 grams. The driver and the other occupant of the vehicle from where contrabands were seized, namely, Ahad Uddin and Makbul Hussain were apprehended and during their interrogation, the apprehended accused persons had informed that the present petitioner has sent them to Aizawl to buy the heroin.

Learned counsel for the petitioner has submitted that the petitioner has been arrested only on the basis of the statements of the accused persons which are not admissible in evidence. He also cited a ruling of the Apex Court in the case of "**Tofan Singh Vs. State of Tamil Nadu**", reported in **(2021) 4 SCC 1**, wherein the Apex Court has observed that the statement made by the co-accused under Section 67 of the NDPS Act is inadmissible in evidence.

Learned counsel for the petitioner has also submitted that in another judgment of Apex court in the case of "**State by (NCB) Bengaluru vs. Pallulabid Ahmad Arimutta & Anr.**", reported in **(2022) 12 SCC 633**", wherein it was observed as follows:-

*“10. It has been held in clear terms in **Tofan Singh Vs. State of Tamil Nadu, (2021) 4 SCC 1** , that a confessional statement recorded under Section 67 of the NDPS Act will remain inadmissible in the trial of an offence under the NDPS Act. In the teeth of the aforesaid decision, the arrests made by the petitioner-NCB, on the basis of the confession/voluntary statements of the respondents or the co-accused under Section 67 of the NDPS Act, cannot form the basis for overturning the impugned orders releasing them on bail. The CDR details of some of the accused or the allegations of tampering of evidence on the part of one of the respondents is an aspect that will be examined at the stage of trial. For the aforesaid reason, this Court is not inclined to interfere in the orders dated 16th September, 2019, 14th January, 2020, 16th January, 2020, 19th December, 2019 and 20th January, 2020 passed in SLP (Crl.) No@ Diary No. 22702/2020, SLP (Crl.) No. 1454/2021, SLP (Crl.) No. 1465/2021, SLP (Crl.) No. 1773-74/2021 and SLP (Crl.) No. 2080/2021 respectively. The impugned orders are, accordingly, upheld and the Special Leave Petitions filed by the petitioner-NCB seeking cancellation of bail granted to the respective respondents, are dismissed as meritless”.*

Learned counsel for the petitioner has also submitted that apart from the statements of the co-accused and the CDR details of the co-accused, which only reveal that the petitioner had been in telephonic contact with the other co-accused persons, nothing is there to implicate the present petitioner in the offence which has been alleged against him and hence, according to the learned counsel for the petitioner, the embargo of Section 37 of NDPS Act, does not come into play. It is further submitted that the petitioner is a permanent resident of Karimganj district and he is ready to face trial.

On the other hand, Mr. D. Das, learned Additional Public Prosecutor, Assam has vehemently opposed grant of bail to the present petitioner on the ground that the quantity of contraband seized in this case is of commercial quantity and the embargo of Section 37 of NDPS Act comes into play. It is also fairly

submitted by the learned Additional Public Prosecutor that though the statement of co-accused is inadmissible in evidence, however, there are CDR details which point towards participation of the present petitioner in the offence alleged in the FIR.

I have considered the submissions made by learned counsel for the petitioner as well as the learned Additional Public Prosecutor, Assam.

Though the contrabands seized in this case is of commercial quantity, however, it appears that the present petitioner has been arrested only on the basis of the statements made by the co-accused, Makbul Hussain and Ahad Uddin from whose possession the contrabands were seized. It appears from the ruling cited by learned counsel for the petitioner that the confessional statement recorded under Section 67 of NDPS Act will remain inadmissible in law and therefore, the statements of the co-accused against the present petitioner may not be a basis to come to the conclusion regarding the involvement of the present petitioner in the offence alleged in the FIR.

As regards CDR details is concerned, though the CDR details collected by the Investigating Officer during the course of investigation show that the present petitioner was in contact with the two other co-accused persons from whose possession the contrabands were seized, however, beyond that there cannot be any assumption as to for what purpose the co-accused were contacted by the present petitioner as there is no other admissible evidence on record to link the present petitioner with the offence alleged in the FIR.

Hence, for the purpose of consideration of the instant bail application, this Court, on the basis of materials available on record, is of the considered opinion that there are reasonable grounds for believing that the petitioner is not guilty of the offence involved in this case. It is also to be taken note of the fact that

there is no material on record to suggest that the petitioner was involved in similar offence on earlier occasions and also there is no other material to show that if the present petitioner is released on bail, he is likely to commit any offence while on bail.

Hence, the embargo under Section 37 of NDPS Act, 1985, in the considered opinion of this Court, is not applicable in this case. Moreover, the petitioner has already been detained behind the bars for last 177 days and he is ready to face the trial.

For the reasons mentioned hereinabove, the present petitioner, Kajal Ahmed @ Jahir, is allowed to go on bail of Rs.1,00,000/- (Rupees one lakh) with 2(two) sureties of like amount, out of which one surety should be a government employee, to the satisfaction of the learned Special Judge, Karimganj with the following conditions:-

- (i) That the petitioner shall regularly appear before the learned Trial Court on each and every date fixed in Special (NDPS) Case No.75/2023. In case of default in appearing before the learned Trial Court without just cause by the petitioner, it would be good ground for cancellation of the bail granted to the present petitioner.
- (ii) That the petitioner shall not leave the jurisdiction of the learned Special Judge, Karimganj without prior leave of the learned Special Judge, Karimganj.
- (iii) That the petitioner shall not directly or indirectly make inducement, threat or promise to any person who is acquainted with the facts of this case so as to dissuade such person from deposing against him in the pending trial against him.

With the above observations, this bail application is hereby disposed of.

JUDGE

Comparing Assistant