

GAHC010225852023



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

Case No. : Bail Appln./3569/2023

MITHILESH KUMAR
S/O MUKUND CHAND SINGH
R/O VILL- ARJPUR
P.S. CHOUSA
DIST. MADHEPURA, BIHAR.

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 MRIDUL KUMAR KALITA

ORDER

07.12.2023

Heard Mr. A. Ahmed, learned counsel for the petitioner. Also heard Mr. B.B. Gogoi, learned Additional Public Prosecutor, appearing for the State of Assam.

This application under Section 439 of the Code of Criminal Procedure,

1973 has been filed by the petitioner, namely, Mithilesh Kumar, who has been detained behind the bars since 09.04.2022 in connection with Special (NDPS) Case No. 56/2022 corresponding to Bazaricherra P.S. Case No. 64/2022 under Section 20(b)(ii)(C)/29 of the NDPS Act, pending before the Court of learned Special Judge, Karimganj.

The gist of accusation in this case is that on the basis of an FIR lodged by one Niranjan Deka on 08.04.2022 before the Officer-In-Charge of Bazaricherra Police Station, *inter-alia*, alleging that on that day, during Naka Checking one Night Super Bus of Sherowali Tour & Travels bearing Registration No. AS01HC6269 was searched in front of Churaibari Watch Post at National Highway No. 8 and during search operation suspected ganja of about 8.7 KG was recovered from the possession of the present petitioner and thereafter, and in the same bus after some time another seizure was made of suspected ganja from one Kamalesh Pancham Yadav and thereafter, the present petitioner was arrested on the same day.

After completion of the investigation, charge-sheet was laid against the present petitioner along with the co-accused Kamalesh Pancham Yadav under Section 20(b)(ii)(C)/29 of the NDPS Act and thereafter, by order dated 18.03.2023 passed in Special Case No. 56/2022, learned Special Judge, Karimganj had framed charges against the present petitioner and the co-accused under Section 20(b)(ii)(C)/29 of the NDPS Act read with Section 34 of the Indian Penal Code.

Learned counsel for the petitioner has submitted that the petitioner had challenged the order of the framing of charges against him for possessing the commercial quantity of contraband by preferring a Criminal Petition under Section 482 of the Code of Criminal Procedure, 1973 and same has been

registered as Criminal Petition No. 765/2023.

Learned counsel for the petitioner has further submitted that in the said Criminal Petition, by order dated 07.12.2023, the charges framed against the petitioner under Section 20(b)(ii)(C)/29 of NDPS Act, 1985 read with Section 34 of the Indian Penal Code has been quashed and as it is apparent from the FIR that the quantity of suspected ganja seized from the possession of the present petitioner was only 8.7 KGs which is less than the commercial quantity. Hence, his continued detention for last 1 year 7 months and 28 days is not justified.

Learned counsel for the petitioner has also submitted that the petitioner is ready to face trial and ready to co-operate in the trial.

On the other hand, learned Additional Public Prosecutor submits that as the original charges are framed under Section 20(b)(ii)(C)/29 of the NDPS Act against the present petitioner and the trial is fixed at evidence stage, he opposes the grant of bail to the present petitioner.

I have considered the submissions made by learned counsel for the petitioner as well as learned Additional Public Prosecutor and have gone through the materials available on record.

Considering the fact that the order of framing charges against the present petitioner under Section 20(b)(ii)(C)/29 of the NDPS Act, 1985 read with Section 34 of the Indian Penal Code has already been quashed by this Court, by order dated 07.12.2022 passed in Criminal Petition No. 765/2023 and further from the perusal of materials on record, it appears that the quantity of ganja seized from the present petitioner was only 8.7 KGs which is less than commercial quantity and therefore, the embargo of Section 37 of NDPS Act, 1985 is not applicable in this case, hence, his continued detention for last 1 year 7 months and 28 days

does not appear to be justified. This Court also takes into consideration the fact that the petitioner is ready to face the trial and co-operate in the trial.

In view of the above, the above named petitioner is hereby directed to go on bail of Rs. 30,000/- with two local suitable sureties of like amount to the satisfaction of the learned Special Judge, Karimganj with the following conditions that:-

(i) the petitioner shall appear before the learned Trial Court as and when so required by the learned Trial Court and shall co-operate in his trial;

(ii) the petitioner shall not leave the jurisdiction of learned Trial Court without prior leave of the learned Trial Court;

(iii) the petitioner shall not directly or indirectly make any inducement, threat or promise to any of the listed witnesses or any other persons who may be acquainted with the facts of the case so as to dissuade such person from deposing against the petitioner in the pending trial against him; and

(iv) the learned Trial Court may impose any additional condition if it deems fit to do so for the sake of fair trial against the petitioner.

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

JUDGE

Comparing Assistant