

GAHC010269932023



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

Case No. : Crl.Rev.P./507/2023

AFTAB HUSSAIN MAZUMDAR
S/O SAHAB UDDIN MAZUMDAR
R/O VILL- ISLAMABAD PART-II
P.S. DHOLAI, DIST. CACHAR, ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR H R CHOUDHURY

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY

ORDER

30.11.2023

1. Heard the learned counsel for the parties.
2. The present application is filed assailing an order dated 18.11.2023 passed by the learned Sessions Judge, Karimganj, in Special Case No.

132/2022 under Sections 22(c)/25/29 of the NDPS Act, 1985.

3. The petitioner herein was in custody in connection with Badarpur P.S. Case No.197/2022 (G.R. Case No. 1649/2022) corresponding to Special (NDPS) Case No. 132/2022 under Section 22(C)/25/29 of the NDPS, Act, 1985.
4. This Court under its order 10.11.2023 passed in Bail Appln No. 3286/2023, directed that the petitioner shall be released on bail of Rs. 1,00,000/- (Rupees One Lakh) only with two government servant sureties of like amount to the satisfaction of learned Special Judge (NDPS Act), Karimganj subject to certain conditions.
5. Pursuant to aforesaid order, the petitioner herein furnished bail bond along with sureties of two government servants namely Jaynal Abedin Barbhuiya son of late Maskad Ali Barbhuiya and Ajib Uddin Barbhuiya, son of late Khari Namwar Ali. The aforesaid sureties were government employees and along with their affidavit furnishing bail bond, they have annexed their salary slip for the month of September, which discloses that their monthly gross salary is below Rs. 1 lakh and accordingly, the learned Sessions Judge, Karimganj rejected such bail bond only for the reason that the monthly gross salary of both the bailors are below Rs. 1 lakh.
6. Heard the learned counsel for the parties. Also perused the materials available on record including the order dated 18.11.2023 passed by the learned Special Judge, Karimganj.
7. Surety is a person who takes responsibility for the actions of an accused person when the accused person is released on bail. In a criminal case,

surety is required to pay for the amount mentioned in the bail bond when the accused jumps the bail. In fact, it is a legal relationship between the surety and the accused for being released on bail. He is a person who give an undertaking to the Court to answer for the appearance of an accused in his bail bonds. It is a legal relationship between the surety and the accused under which, the surety gives an undertaking to the Court to answer for the appearance of an accused in his bail bonds. There is no quarrel on the propositions that the Magistrate/Court as the case may be, if, is not satisfied with the sureties dependability, identification, fitness or sufficiency, the surety may be rejected.

8. In the case in hand, the surety has been rejected on the basis of insufficiency. In the considered opinion of this Court the learned Special Judge, Karimganj, has not raised any question regarding the authenticity of the salary certificate or to the fact that the sureties in question are not government employees.
9. That being the position in the considered opinion of this Court, the sufficiency could not have been doubted only on the ground that the monthly salary of the sureties are below the amount as mentioned in the order granting bail inasmuch as admittedly the aforesaid sureties are having monthly income of more than 50% of Rs. 1 lakh. The income of the such sureties in a financial year, shall be much higher than the amount of bail bond. Accordingly, this Court is of the view that the learned trial Court has committed an error in expressing dissatisfaction over sufficiency of the surety without there being any doubt regarding authenticity of the salary certificate or that they will have no sufficient money to honour the bond.

10. In view of the aforesaid, the impugned order dated 18.11.2023, is interfered with and the learned Sessions Judge, Karimganj, is to proceed in accordance with law and taking note of the observations and decision made in this order.
11. Accordingly, this criminal revision petition stands disposed of.

JUDGE

Comparing Assistant