

GAHC010006562024



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

Case No. : Bail Appln./161/2024

MONGAL PAUL @ MODAN PAUL
(NAME SHOWN AS MADAN PAUL IN THE CHARGE SHEET AND IN THE
FORWARDING REPORT) S/O- LT. BHANU CH. PAUL, VILL- RANGAMATI, P.S.
BAZARICHERRA, DIST.- KARIMGANJ, ASSAM

VERSUS

THE STATE OF ASSAM
TO BE REPRESENTED BY THE PUBLIC PROSECUTOR

Advocate for the Petitioner : MR. M A CHOUDHURY

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

Date : 03.04.2024

- 1)** Heard Mr. A. Ahmed, learned counsel for the petitioner. Also heard Mr. K. K. Das, learned Additional Public Prosecutor for the State respondent.
- 2)** This application under Section 439 of the Code of Criminal Procedure, 1973 has been filed by the petitioner, namely, Mongal Paul @ Modan Paul who

has been detained behind the bars since 05.11.2022 in connection with Special (NDPS) Case No. 158/2022 corresponding to Bazaricherra P. S. Case No. 194/2022 pending in the Court of learned Special Karimganj under Section 22(c)/25/29 of the NDPS Act, 1985.

3) This case was initiated on the basis of an FIR lodged on 05.11.2022 by one Sri Jyoti Prasad Das, In-charge of Nagra Police Post, *inter-alia*, mentioning that on the basis of specific information received a naka checking was conducted near Rangamati Bridge and during the naka checking one motor cycle bearing Registration No. AS 11D-2500 was found coming towards the naka checking and when it was signaled to stop, they tried to escape from that place however, police personnel present there were able to apprehend both the motorcycle rider and they were found to be one Azim Uddin and one Amar Bahadur Chetri.

4) During interrogation they led the police team to a jungle from where 252 numbers of bottles of cough syrup were recovered and also two separated recovery of 248 numbers of cough syrup bottle was made.

5) It was also alleged in the FIR that separate recovery of 20 numbers of cough syrup bottles were also made from the vehicle bearing Registration No. AS 10 AC 6413.

6) Learned counsel for the petitioner has submitted that no recovery was made from the present petitioner and the present petitioner, namely, Mongal Paul @ Modan Paul was apprehended only on the basis of the statement made by the co-accused.

7) It is pertinent to mention herein that after the investigation charge-sheet was laid against four accused persons including the present petitioner. The main ground for seeking bail by the present petitioner which has been

pressed by the learned counsel for the petitioner is that the petitioner was implicated in this case only on the basis of the statement of two co-accused namely, Azim Uddin and one Amar Bahadur Chetri and no other material is there on record against the present petitioner.

8) Learned counsel for the petitioner has also pointed towards the charge-sheet copy of which is available in the case record and has submitted that even in the charge-sheet no accusation has been made against the present petitioner except the fact that he was apprehended on the basis of the statement made by co-accused.

9) Learned counsel for the petitioner has cited a ruling of Apex Court of India in "***Tofan Singh v. State of Tamil Nadu***" reported in **(2021) 4 SCC 1**, wherein the Apex Court has observed that the statement of a co-accused recorded under Section 67 of the NDPS Act will not be admissible in the trial against any offence under NDPS Act.

10) On the other hand, learned Additional Public Prosecutor has submitted that in this case already four witnesses have been examined and the trial is progressing.

11) It is also submitted that during trial the PW-1 and PW-4 have categorically implicated the present petitioner and has stated that the contraband was also recovered from the possession of the present petitioner.

12) Though, it is true that the statement of the co-accused cannot be a basis of proceeding in a trial in NDPS Act and though in the charge-sheet the Investigation Officer had not mentioned in detail the accusation against the present petitioner, however, at this stage when the trial is proceeding and when four witnesses have been examined and when two of the said four witness namely, PW-1 and PW-4 have implicated the present petitioner, this case does

not fall within the category where the accusation is only on the basis of the statement of co-accused.

13) Therefore this case is not covered under the case of "***Tofan Singh v. State of Tamil Nadu***" (*Supra*) as there are other materials also on record incriminating the present petitioner. As the quantity of contraband in this case is of commercial quantity, hence the embargo of Section 37 is applicable in this case and which the petitioner is unable to overcome, hence the prayer for bail.

14) For the reasons stated hereinbefore, the prayer for bail of the present petitioner is hereby rejected.

JUDGE

Comparing Assistant