

GAHC010012342024



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

Case No. : Bail Appln./206/2024

USMAN ALI
S/O KUTUB ALI
R/O VILL- NIZ KATIGORAH PART-I, P.S. KATIGORAH
DIST. CACHAR, ASSAM

VERSUS

THE STATE OF ASSAM
TO BE REP. BY THE LEARNED PP, ASSAM

Advocate for the Petitioner : MR A R BHUYAN

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

ORDER

Date : 05-02-2024

Heard Mr. A.R. Bhuyan, learned counsel for the petitioner *Usman Ali*.

2. The petitioner has filed this application under Section 439 of the Code of Criminal Procedure, 1973 with prayer for bail as he is behind bars since 08.07.2023 in connection with NDPS Case No. 77/2023 arising out of Badarpur

Police Station Case No. 171/2023 registered under Sections 22(c)/29 of the NDPS Act, 1985.

3. Heard Mr. B.B. Gogoi, learned Additional Public Prosecutor for the respondent State.

4. It is submitted on behalf of the petitioner that the petitioner has been forwarded to custody on the statement of the co-accused. It is no more *res integra* that the statement of the co-accused cannot be used to rope in the accused. The FIR was lodged on 03.07.2023 whereas the accused was forwarded to custody on the statement of the co-accused on 08.07.2023. The learned Sessions Judge, Karimganj passed a cryptic order rejecting the bail petition of the petitioner on 11.08.2023 in connection with Misc. Bail Application No. 279/2023. It is contended that without proper enquiry and purely on suspicion the petitioner is behind bars since 08.07.2023. The petitioner's fundamental right to liberty as guaranteed by Article 21 of the Constitution of India has been curtailed as he is behind bars without any sufficient grounds.

5. The learned Additional Public Prosecutor has raised serious objection stating that the charge sheet has already been laid against the petitioner. After a thorough investigation under the NDPS Act, charge sheet has been laid against the petitioner. It cannot be observed at this juncture that the petitioner was roped in only on the basis of the statement of the co-accused. The charges are yet to be framed. This case is fixed for consideration of charges on 13.02.2024. This case is at its initial stage.

6. I have considered the submissions at the bar with circumspection. The ratio of the decision of Hon'ble the Supreme Court in *Rabi Prakash Vs. The State of Odisha in Special Leave to Appeal (Crl.) No. 4169/2023*, order dated

13.07.2023 is not applicable to this case. In the decision of Hon'ble the Supreme Court in Rabi Prakas' case, Rabi Prakash was behind bars for more than three years. When he was enlarged on bail only 1 (one) witness out of 19 (nineteen) witnesses have been examined. In this case the petitioner is behind bars since 08.07.2023. Charge sheet reveals that only nine witnesses are enlisted as prosecution witnesses. Charges are yet to be framed. The rigour of Section 37 of the NDPS Act acts as an embargo. At this juncture, there appears to be no justified ground to grant bail to the petitioner.

8. Bail stands rejected at this juncture.

In the above terms this Bail Application stands disposed of.

JUDGE

Comparing Assistant