

GAHC010033292024



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

Case No. : AB/427/2024

ALI AMJOD @ ALI AJMOL
S/O MD. MOYUB ALI
VILL- KALKALIBASTI, P.S. PATHARKANDI
P.S. AND DIST. KARIMGANJ, 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 MRIDUL KUMAR KALITA

ORDER

Date : 15.05.2024

- 1)** Heard Mr. H. R. A. Choudhury, learned counsel for the petitioner. Also heard Mr. K. Baishya, learned Additional Public Prosecutor for the State respondent.
- 2)** This anticipatory bail application has been preferred under Section 438

of Code of Criminal Procedure, 1973, by the present petitioner, namely, Ali Amjod @ Ali Ajmol, who is apprehending his arrest in connection with Special Case No. 35/2023 arising out of Bazaricherra P. S. Case No. 86/2023 under Sections 20(b)(ii)(C)/25/29 of the NDPS Act, 1985.

3) The gist of the accusation in this case is that on 12.04.2023, one Asish Mohanta, S.I. of police had filed an FIR before the Officer-In-Charge of Bazaricherra Police Station, *inter-alia*, alleging that on receiving information through reliable sources regarding movement of some illegal contraband (ganja), a search operation was conducted at Kurti village near the Kurti bridge on National Highway No. 208A and during naka checking operation, one Bajaj auto rickshaw bearing Registration No. AS 10 AC 8213 was intercepted and was searched. During search of the said vehicle, 41 packets of ganja weighing about 191.005 kgs were recovered from the possession of one Ruyel Uddin @ Jahir Uddin. On receipt of the said FIR, Bazaricherra P. S. Case No. 86/2023 was registered.

4) Later on, investigation was initiated and after completion of investigation, charge sheet was laid against the three persons, including the present petitioner, who was shown as an absconder in the charge sheet. The learned counsel for the petitioner has submitted that nothing was seized from the possession of the present petitioner and the only allegation against the present petitioner is that during interrogation of the apprehended accused persons, the name of the present petitioner was revealed.

5) The learned counsel for the petitioner has submitted that the petitioner is innocent and in no manner involved in the offence alleged in this case.

6) The learned counsel for the petitioner has submitted that in view of the ruling of the Apex Court in the case of “**Tofan Singh Vs. State of Tamil Nadu**”

reported in **(2021) 4 SCC 1**, the statement of the co-accused made under Section 67 of the NDPS Act, 1985 cannot be used against the other accused.

7) It is also submitted by learned counsel for the petitioner has submitted that the trial court has issued non-bailable warrant of arrest against the present petitioner on 12.04.2024 and has fixed the next date of appearance on 15.06.2024 and he apprehends that he may be arrested at any moment.

8) The learned counsel for the petitioner has also submitted that the petitioner is ready to face trial and therefore, he may be allowed to go on bail.

9) On the other hand, learned Additional Public Prosecutor has submitted that from scanned copy of the case record of Special Case No. 35/2023, it appears that the trial court had issued at the first instance only summons against the present petitioner and it is only when the petitioner failed to appear before the trial court after receiving the summons, the trial court had issued non-bailable warrant of arrest.

10) I have considered the submissions made by learned counsel for both the sides and also perused the material available on record.

11) Though, it is no *res-integra* after the judgment of the Apex Court in the case of “**Tofan Singh Vs. State of Tamil Nadu**” (*Supra*) that the statement of the co-accused recorded under Section 67 of the NDPS Act, 1985 is inadmissible in evidence in a trial of offence under the NDPS case, however, in the instant case, as Trial Court had issued the summons at the first instance, the petitioner may appear before the Trial Court and may pray for regular bail and plead his case for bail before the Trial Court. If such a prayer is made by the petitioner, the Trial Court shall consider the same as per law.

12) Considering the submission made by learned counsel for the petitioner as well as considering the facts and circumstances of this case, the petitioner is

hereby directed to appear before the Trial Court, i.e., the Court of learned Special Judge, Karimganj, on the next date fixed in Special Case No. 35/2023, i.e., on 15.06.2024 and may pray for any relief to which he is legally entitled to, if so advised.

13) To facilitate his appearance before the Trial Court on the next date fixed, the operation of non-bailable warrant of arrest issued against the petitioner by the trial court on 12.04.2024 shall be kept in abeyance till 15.06.2024.

14) With the above observation, this anticipatory bail application is hereby disposed of.

JUDGE

Comparing Assistant