

GAHC010043842024



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

Case No. : Bail Appln./627/2024

FAIZUDDIN AHMED @ BOGA
S/O- LATE AJIR ALI, RESIDENT OF VILLAGE- BIJULIBARI, P.S. SIPAJHAR,
DISTRICT- DARRANG, ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY PP, ASSAM

Advocate for the Petitioner : MR M HOQUE
Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI

ORDER

25.04.2024

Heard Mr. A. Paramanik, learned counsel appearing for the accused petitioner as well as Mr. R. R. Kaushik, learned Addl. P.P., Assam appearing for the State respondent.

By this petition under Section 439 Cr.P.C., the accused-petitioner, namely, **Faizuddin Ahmed @ Boga**, has prayed for grant of bail in connection with **Special (N) Case No.07/2024 in corresponding G.R. Case No. 429/2023 arising out of Sipajhar PS Case No.101/2023** under Sections **20(C)/29 of the NDPS Act**.

The brief fact of the case is that on 24.02.2023 an FIR has been lodged before the officer in-charge, Sipajhar PS stating *inter alia* that on 23.02.2023 at about 2.45 am while the informant along with some other police personal were on patrolling duty they noticed a Tata indica vehicle bearing No. AS 01 AV 8899 parked at Narikali over NH 52 under Sipajhar Police station. But neither the driver nor any person was present inside the vehicle. As the vehicle was locked so the police failed to search the vehicle and brought the said vehicle to police station with the help of crane. On the next date i.e. on 24.02.2023 the vehicle was opened by breaking up the lock of the driver side door and searched the vehicle and three numbers of packets containing suspected ganja were recovered and the vehicle was seized. Subsequently, a case was registered vide Sipajhar PS Case No. 101/2023 under Section 20(C)/29 of NDPS Act.

It is submitted by the learned counsel for the petitioner that the petitioner was arrested by police purely on suspicion that too after ten months of lodging of FIR. The petitioner is neither the driver nor the owner of the seized vehicle and nothing was recovered from the possession of the present petitioner. The petitioner is no way connected with the alleged offence. It is further submitted that the petitioner has been detained in judicial custody since 26.12.2023. In view of the accusation as well as the length of detention, the petitioner may be enlarged on bail.

In response Mr. R. R. Kaushik, learned Additional Public Prosecutor has submitted that the driver of the seized vehicle was arrested subsequently and after recording his statement it has come to the light that the accused petitioner was with him in the seized vehicle on 24.02.2024 and after knowing about the presence of police he had escaped from the vehicle.

I have considered the submission of the learned counsel for the parties. I have

also perused the trial court record. It reveals that though charge-sheet has been submitted but charge has not yet been framed. The co-accused, Gunaram Daimari, who is in central jail, Guwahati was admitted into GMCH for treatment. On 18.03.2024 and 01.04.2024 the jail authority of central jail, Guwahati informed that they could not produce the UTP Gunaram Daimari and prayed for another date for his production. The case was fixed on 09.04.2024 for consideration of charge. It is reported that charge is yet to be framed.

Admittedly, nothing was recovered from the possession of the present petitioner. On the basis of the statement of the co-accused, the petitioner was arrested. It is also to be noted that the petitioner was arrested after ten months of recovery of ganja from the seized vehicle. The petitioner is not the driver or the owner of the said vehicle.

In the case of *Tofan Singh vs State of Tamil Nadu* reported in (2013) 16 SCC 31, it was held that a confessional statement recorded under Section 67 of the NDPS Act has been held to be inadmissible in trial of an offence under NDPS Act.

In view of the above as well as considering the length of detention, this Court is of the view that the accused/petitioner may be enlarged on bail.

Accordingly, the petitioner, named above, shall be released on bail, on furnishing bail bond of **Rs.1,00,000/-** with **two suitable sureties** of the like amount, to the satisfaction of learned **Special Judge, Darrang, Mangaldai**.

The direction for bail is further subject to the following condition that the accused-petitioner:

(a) shall not leave the territorial jurisdiction of the learned trial court without prior written permission from him/her till disposal of the case.

The learned Special Judge, Darrang, Mangaldai, is at liberty to impose any other condition(s) as it deems fit and proper at the time of releasing the accused/petitioners on bail to procure his attendance during trial.

The observation made above, shall confine for the purpose of disposal of this bail application only and shall not in any way affect the proceeding of the trial.

In terms of the above, this bail application stands disposed of.

JUDGE

Comparing Assistant