

GAHC010058422024



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

Case No. : Bail Appln./830/2024

GULZAR HUSSAIN
S/O ABDUL MALIK
VILL- GULALKANDI,
P.O BAZARGHAT
P.S. RATABARI,
DIST. KARIMGANJ, ASSAM

VERSUS

THE STATE OF ASSAM
REP BY THE PP, ASSAM

Advocate for the Petitioner : MR H R CHOUDHURY, S. TALUKDAR

Advocate for the Respondent : PP, ASSAM,

BEFORE
HONOURABLE MR. JUSTICE PARTHIVJYOTI SAIKIA

ORDER

Date : 21.08.2024

Heard Mr. H.R. Choudhury, the learned counsel appearing for the petitioner as well as Mr. K.K. Parasar, the learned Additional P.P. for the State of Assam.

2. This is an application u/s 439 of the Code of Criminal Procedure praying for

grant of bail to the petitioner, Gulzar Hussain, who is facing trial in Special NDPS Case No. 154/2022 pending in the court of Special Judge, Karimganj arising out of Bazaricherra P.S. Case No. 189/2022.

3. On 18.10.2022, police had an information that a vehicle will be carrying narcotic drugs. Therefore, police created a Naka checking post on the highway on 19.10.2022. On that day, police stopped a Mahindra Thar vehicle bearing registration No. ML/05X/1215. The vehicle was driven by Rajal Uddin Talukdar and Jabrul Hoque was the passenger. Police recovered 2 kilograms 558.41 grams of suspected heroine from the said vehicle.

4. During the period of investigation, it was found that Rajal Uddin Talukdar was in constant contact with the present petitioner. On conclusion of investigation, police filed a charge sheet against the present petitioner also alongwith some other persons. The trial court framed charges under Sections 21 C/25/29 of the NDPS Act against the present petitioner.

5. One of the accused, namely, Tayabur Rahman, was allowed to go on bail by this Court on 19.03.2020.

6. In support of his claim, Mr. Choudhury has relied upon the judgment of the Hon'ble Supreme Court that was delivered in **Tofan Singh Vs. State of Tamil Nadu** reported in **(2021) 4 SCC 1**. In the said judgment, the Supreme Court has held that confessional statement recorded u/s 67 of the NDPS Act will remain inadmissible in a trial, in an offence under the NDPS Act.

7. Mr. Parasar has objected to the prayer for bail.

8. The only visible incriminating material against the petitioner is that the petitioner had purchased the aforesaid Mahindra Thar vehicle on 16.09.2022 from the secondhand showroom at Guwahati and sold the same to Rajal Uddin Talukdar on 28.09.2022 vide a written agreement. On the date of the alleged occurrence i.e. on 18.10.2022, the registered owner of the vehicle was Kamal Hussain. The vehicle was

transferred in the name of the present petitioner on 30.11.2022, i.e. after 1 month 10 days from the date of occurrence. The petitioner claimed that he was neither the owner nor the possessor of the said vehicle at the time of the occurrence.

9. I have considered the submissions made by the learned counsels of both sides.

10. The petitioner has already spent 1 year 7 months and 22 days in custody, though more than 20 prosecution witnesses have been examined by the trial court.

11. Considering the aforesaid facts, this Court is of the opinion that further detention of the petitioner in custody is not required. Therefore, his bail application is allowed.

12. The petitioner, Gulzar Hussain, who is facing trial in Special NDPS Case No. 154/2022 pending in the court of Special Judge, Karimganj is allowed to go on bail of Rs.30,000/- with a surety of like amount to the satisfaction of the Special Judge, Karimganj.

The bail application stands disposed of accordingly.

The CD shall be returned.

JUDGE

Comparing Assistant