

GAHC010059112024



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

Case No. : Bail Appln./849/2024

NOMAN UDDIN
S/O KHARIS ALI @ HARIS ALI
R/O VILL- SONATULA
P.S. PATHARKANDI, DIST. KARIMGANJ, ASSAM

VERSUS

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

Advocate for the Petitioner : MR. M A CHOUDHURY

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

29.07.2024

- 1.** Heard Mr. M.A. Choudhury, learned counsel for the petitioner. Also heard Mr. K.K. Parasar, learned Additional Public Prosecutor appearing for the State of Assam.
- 2.** This application under Section 439 of the Code of Criminal

Procedure, 1973 has been filed by the petitioner, namely, Noman Uddin, who has been detained behind the bars since 07.10.2023, in connection with Special (NDPS) Case No. 130/2023, corresponding to Ratabari P.S. Case No. 236/2023 under Section 21(c)/25/29 of the NDPS Act, 1985.

3. The gist of accusation in this case is that on 07.10.2023, one K.S. Rengma, SI of Police had lodged an FIR before the Officer-In-Charge of Ratabari Police Station, *inter alia*, alleging that on receipt of an information through reliable sources, that there would be movement of some contraband in the four wheeler vehicle from Mizoram towards Patherkandi, a naka checking was conducted at Ratabari police check post and one vehicle bearing Registration No. TR-01BK-0613 was intercepted. The said vehicle was driven by one Giyas Uddin and there were two other occupants in the said vehicle, including the present petitioner. On search of the vehicle by the police 568 grams of suspected heroin was seized, which were kept in cartoon box inside the said vehicle.

4. On receipt of the said FIR, Ratabari P.S. Case No. 236/2023 was registered and investigation was initiated. Ultimately, on completion of the investigation, charge-sheet was laid against three accused persons, including the present petitioner, under Section 21(c)/25/29 of the NDPS Act, 1985.

5. The learned counsel for the petitioner has submitted that the petitioner is in no way involved in the offence alleged in the FIR as he merely took lift in the said vehicle without being aware of the fact that the contraband was carried in the said vehicle.

6. The learned counsel for the petitioner has submitted that there is no evidence against the present petitioner on record, except the statement of the co-accused.

7. On the other hand, the learned Additional Public Prosecutor has vehemently opposed the grant of bail to the present petitioner on the ground that the contraband seized in this case is of commercial quantity and the embargo of Section 37 of the NDPS Act, 1985 comes into play.

8. He also submits that the *modus operandi* of the present petitioner is that he became acquainted with the main accused Gias Uddin and they went to Mizoram and purchased the contraband from there and then one of the co-accused used to drive the vehicle namely, Gias Uddin and other two used to travel in the said vehicle as passengers, so that in case of interception by police, two co-accused may take the plea that they took the lift in the said vehicle.

9. The learned Additional Public Prosecutor has also submitted that since the charge-sheet has been laid against the present petitioner under Section 21(c)/25/29 and 22(c) of the NDPS Act, 1985, a *prima facie* presumption against the aforesaid petitioner is there regarding his involvement in the offence alleged.

10. I have considered the submissions made by the learned counsel for both the sides and have perused the materials available on record, including the scanned copy of the Special (NDPS) Case No. 130/2023. There is no dispute regarding the fact that the quantity of contraband seized from the vehicle which the petitioner was found at the time of

interception of the said vehicle is commercial quantity (568 grams of heroin). It appears that all the seizure witnesses have implicated the present petitioner regarding his involvement of the offence along with the other co-accused.

11. Though, the petitioner has taken the plea that he took lift in the aforesaid vehicle, however, in the bail application nothing has been mentioned as to when, from where and at what time and under circumstances the petitioner had to take lift in the vehicle from where the contraband were seized. As the petitioner was apprehended, along two other co-accused from the vehicle in which the commercial quantity of heroin was seized, and as proper justification could not be given by the petitioner regarding his presence in the said vehicle, this Court is of considered opinion that at this stage, it is difficult to come to a conclusion that there are reasonable grounds for believe that the petitioner is not guilty of the offence alleged against him, hence, the embargo of Section 37 of the NDPS Act, 1985 would be operative in this case against the present petitioner and accordingly, the prayer for bail is rejected.

12. This bail application is accordingly disposed of.

JUDGE

Comparing Assistant