

GAHC010060252024



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

Case No. : AB/772/2024

QUAMRUL ISALM @ KAMRUP AHMED @ KHALLIN
S/O ABDUL MANNAN, R/O VILL- LAMAJUAR (BHANGA), P.S.-BADARPUR,
DIST- KARIMGANJ, ASSAM

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

Advocate for the Petitioner : Mr. B K Mahajan
MR. A CHAUDHURY

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE PARTHIVJYOTI SAIKIA

ORDER

22.03.2024

Heard Mr. B K Mahajan, learned counsel for the petitioner as well as Mr. D P Goswami, learned Additional Public Prosecutor, Assam.

By this application filed under Section 438 CrPC, the petitioner, namely, Quamrul Islam @ Kamrul Ahmed @ Khallin has prayed for pre-arrest bail in connection with Special (NDPS) Case No. 103/2023, pending in the court of the learned Sessions Judge, Karimganj arising out of Bazaricherra P.S. Case No. 166/2023 registered under Sections 22(C)/25/29 of the NDPS Act.

The petitioner has been shown as absconder in the charge-sheet under different sections of law of NDPS Act.

From the materials available on record, it appears that the petitioner has been made an accused only on the basis of statements of some co-accused though nothing was recovered from the present petitioner.

In support of his contention, Mr. Mahajan has relied upon the judgment of the Hon'ble Supreme Court that was delivered in ***Tofan Singh v. State of Tamilnadu***, reported in ***(2021) 4 SCC 1***.

In paragraph 158.2 of the said judgment, it was stated that a statement under Section 67 of the NDPS Act cannot be used as a confessional statement in the trial of an offence under the NDPS Act.

Mr. Mahajan further relied upon another judgment of the Hon'ble Supreme court that was rendered in ***Sanjeev Chandra Agarwas and Another v. Union of India***, reported in ***(2021) 20 SCC 57***. Paragraphs 3 and 4 and of the said judgment are quoted as under:

- “3. *The factual position is that no narcotic drugs or psychotropic substances were recovered from the premises of the two appellants. As per the prosecution, 4 kg of Acetic Anhydride (Controlled Substance) was allegedly found from the premises of the appellants located at Gyan Scientific Agency, Varanasi. The High Court was not correct in relying on the statements made by other accused under Section 67 of the NDPS Act, in light of the judgment of this Court in Tofan Singh v. State of T.N. It is pointed out that the chargers under Sections 9-A and 25 of the NDPS Act have been framed and to this extent there is no challenge and dispute.*
4. *While not interfering with the order directing framing of charges under Sections 9-A and 25, direction in the impugned order to frame charges against the two appellants, namely, Sanjeev Chandra Agarwal and Rajiv Sethi under Sections 27-A and 29-A of the NDPS Act cannot be sustained and is set aside. ”*

After hearing the learned counsel for both the sides, this Court is of the opinion that, since the petitioner intends to face the trial, he should be given an opportunity to face the same. Accordingly, prayer of the petitioner for pre-arrest bail is allowed.

It is hereby directed that in the event of arrest of the petitioner Quamrul Islam @ Kamrul Ahmed @ Khallin in connection with Special (NDPS) Case No. 103/2023 pending in the court of the learned Sessions Judge, Karimganj arising out of Bazaricherra P.S. Case No. 166/2023 registered under Sections 22(C)/25/29 of the NDPS Act, he shall be released on bail of Rs.25,000/- with one surety of like amount to the satisfaction of the learned trial court.

It is also directed that the petitioner shall appeal before the Investigating Officer within 10 (ten) days from today.

With the above direction, the present bail application is disposed of.

JUDGE

Comparing Assistant