

GAHC010100692024



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

Case No. : Bail Appln./1480/2024

AHMED ALI
S/O LATE HAZI ABDUR RAHIM, R/O VILL- KURTI, P.S.-BAZARICHERRA,
DIST- KARIMGANJ, ASSAM

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

Advocate for the Petitioner : MR H R A CHOUDHURY

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

25.06.2024

1. Heard Mr. H.R.A. Choudhury, learned Senior Counsel, assisted by Mr. R.A. Mazumder, learned counsel for the petitioner. Also heard Ms. S. Jahan, learned Additional Public Prosecutor, Assam, appearing for the State respondent.

- 2.** This application under section 439 of the Code of Criminal Procedure, 1973, has been filed by the petitioner, Ahmed Ali, who has been detained behind the bars since 14.04.2023, (for more than 1 year 2 months) in connection with Special (NDPS) Case No. 35/2023, corresponding to Bazaricherra P.S. Case No. 86/2023, pending before the Court of learned Special Judge, Karimganj.
- 3.** The gist of accusation in this case is that, on 12.04.2023, one Sri A. Mahanta, In-Charge of Kathaltali Watchpost lodged an FIR before the Officer-In-Charge of Bazaricherra Police Station, *inter alia*, alleging that on receipt of specific information through reliable sources regarding transportation of huge quantity of ganja from Kurti village towards Chandkhira in a Bajaj auto rickshaw bearing Registration No. AS10AC8213, a naka checking was organized near Kurti village.
- 4.** During the naka checking operation, the police party intercepted one auto rickshaw coming from Kurti village and the said auto rickshaw was driven by one Ruyel Uddin @ Jahir Uddin, and on search of the said auto rickshaw, 41 numbers of packets of ganja wrapped in plastic leaves were recovered therefrom. On weighing the said recovered ganja the weight of same was found to be 191.005 kg.
- 5.** On receipt of the said FIR, Bazaricherra P.S. Case No. 86/2023 was registered.
- 6.** During investigation, while the arrested accused, namely, Ruyel Uddin was interrogated, he disclosed that the recovered ganja was brought by him from the present petitioner and accordingly, the police arrested the present petitioner.

- 7.** It is also pertinent to mention herein that on the next date, i.e. on 13.04.2023, at about 3:00 PM, a search was conducted by the Officer, who seized the ganja on the previous date, i.e. Sri A. Mahanta, SI of Police.
- 8.** In the premises of the present petitioner Ahmed Ali, one packet containing ganja weighing about 12.310 kg was recovered therefrom.
- 9.** After completion of the investigation, charge-sheet was laid against the present petitioner and two more accused persons.
- 10.** The learned Senior Counsel for the petitioner has submitted that the quantity of ganja seized from the bank of the fishery, belonging to the present petitioner, is only 12.310 kg which is less than commercial quantity.
- 11.** The learned Senior Counsel for the petitioner has also submitted that the recovery of commercial quantity of ganja, i.e. 191.005 kg was made from the possession of the co-accused and with the said recovery, the present petitioner is no way connected.
- 12.** It is also submitted by the learned Senior Counsel for the petitioner that the only incriminating material connecting him to the first seizure is the statement of co-accused Ruyel Uddin, which according to the learned Senior Counsel for the petitioner is inadmissible in evidence.
- 13.** The learned Senior Counsel for the petitioner has submitted that as the only material against the petitioner connecting him with the 191.005 kg of ganja is the statement of the co-accused and as the quantity of ganja seized from his possession is of intermediate quantity and he is entitled to get bail.

14. The learned Additional Public Prosecutor submits that the trial is at the initial stage and charges are yet to be framed. She also submits that even if the statement of co-accused is not taken into consideration, the drugs, were, in fact recovered from the possession of the present petitioner, though it is of intermediate quantity.

15. I have considered the submissions made by the learned counsel for both the sides and have perused the materials available on record. It appears that there were two seizures made in this case. The first seizure was made on 12.04.2023, wherein, 191.005 kgs of ganja were recovered and the second seizure was made from the premises of the present petitioner where only 12.310 kgs of ganja was recovered. It also appears from record that only incriminating materials implicating the present petitioner is the statement of Ruyel Uddin (co-accused) which was recorded during the course of the investigation. It is no longer *Res Integra* that the statement of co-accused recorded under Section 67 of the NDPS Act, is not admissible in evidence against an accused facing trial for commission of an offence under the NDPS Act, 1985 as held by the Apex Court's judgment in the case of "**Tofan Singh Vs. State of Tamil Nadu**" reported in "**(2021) 4 SCC 1.**" As it appears that the quantity of ganja seized from the present petitioner is of intermediate quantity. The embargo of section 37 of the NDPS Act, 1985 would not be applicable in the case of the present petitioner.

16. Hence, this Court is of the considered opinion that the petitioner is entitled to get bail in this case.

17. For reasons mentioned herein above, the above-named petitioner is allowed to go on bail of Rs. 50,000/- with a suitable surety of like

amount subject to the satisfaction of the learned Special Judge, Karimganj with the following conditions:

i. That the petitioner shall cooperate in the trial of Special (NDPS) Case No. 35/2023, which is pending in the Court of learned Special Judge, Karimganj;

ii. That the petitioner shall appear before the Trial Court as and when so required by the Trial Court;

iii. That the petitioner shall not directly or indirectly make any inducement, threat, or promise to any person who may be acquainted with the facts of the case, so as to dissuade such person from disclosing such facts before the Trial Court in the trial pending against the present petitioner;

iv. That the petitioner shall provide his contact details including photocopies of his Aadhar Card or Driving License or PAN card and mobile number, as well as other contact details before the Trial Court;

v. That the petitioner shall not leave the jurisdiction of the Trial Court without prior permission of the Trial Court and when such leave is granted by the Trial Court, the petitioner shall submit his leave address and contact details during such leave before the trial court; and

vi. That the petitioner shall not commit any similar offence while on bail.

18. It is hereby made clear that the observations made herein above, in this order were made only for consideration of the bail application filed

by the present petitioner and it shall have no bearing in the trial which is pending against the present petitioner before the Trial Court.

- 19.** With the above observation, this bail application is accordingly, disposed of.

JUDGE

Comparing Assistant