

GAHC010129652024



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

**Case No. : Bail Appln./1940/2024**

ALI AMJOD @ ALI AJMOL  
SON OF MD. MOYUB ALI, VILLAGE- KALKALIBASTI, PS- PATHARKANDI,  
PS AND DIST- KARIMGANJ, ASSAM

VERSUS

THE STATE OF ASSAM  
REP BY THE PP ASSAM

**Advocate for the Petitioner : MR H R CHOUDHURY**

**Advocate for the Respondent : PP, ASSAM**

**BEFORE**  
**HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA**

**ORDER**

**Date : 19-07-2024**

- 1.** Heard Mr. H.R. Choudhury, learned counsel for the petitioner. Also heard Mr. B.B. Gogoi, learned Addl. PP, Assam.
- 2.** This application under Section 439 of the Code of Criminal Procedure, 1973 has been filed by the petitioner Ali Amjod @ Ali Ajmol who is detained behind the bars since 19.06.2024 in connection with Special (NDPS) Case No. 35/2023

arising out of Bazaricherra P.S. Case No. 86/2023 under Sections 20(b)(ii) (C)/25/29 of the NDPS Act, 1985.

**3.** The gist of accusation in this case is that on 12.04.2023 an FIR was lodged by one Asish Mahanta, S.I. of Police of Kathaltali Watch Post before the Officer-In-charge of Bazaricherra Police Station, *inter alia*, stating that on receipt of an information received through reliable source that a huge consignment of ganja was illegally transported from the side of Kurti village towards Chandkhira by a Bajaj Auto Rickshaw bearing registration No. AS 10 AC 8213, a *naka* checking was organised near Kurti village at National Highway No. 208A on 12.04.2023. After some time, the aforesaid Bajaj Auto Rickshaw was intercepted and was directed to be stopped. However, the driver of the said auto rickshaw tried to fled away. The police chased the driver and ultimately apprehended him. Police found the name of the apprehended person as Ruyel Uddin @ Jahir Uddin. During search of the Bajaj Auto Rickshaw which was seized in this case total 41 packets of ganja packed in plastic case was recovered. On weighing the seized ganja the weight was found to be 191.005 kgs. On receipt of the said FIR Bazaricherra P.S. Case No. 86/2023 was registered and investigation was initiated. Ultimately on completion of the investigation charge-sheet was laid against three accused-persons including the present petitioner.

**4.** Learned counsel for the petitioner has submitted that the present petitioner, namely Ali Amjod @ Ali Ajmol was shown as an absconder in the charge-sheet. Learned counsel for the petitioner has also submitted that the charge-sheet has been laid against the present petitioner without there being any basis for the same. The only basis on which the charge-sheet has been laid against the present petitioner is the statements of the co-accused recorded u/s 161 Cr.PC/67 of the NDPS Act, 1985 which is not admissible in evidence against the

present petitioner. Learned counsel for the petitioner has also submitted that after coming to know about the charge-sheet the petitioner approached this Court by filing an anticipatory bail application bearing AB No. 427/2024 which was disposed of on 15.05.2024 wherein the petitioner was directed to approach the Trial Court and accordingly the petitioner surrendered before the Trial Court on 19.06.2024 and prayed for bail before the Trial Court. However, the Trial Court rejected the prayer for bail and since then the petitioner is detained behind the bars.

**5.** Learned counsel for the petitioner has submitted that the petitioner has been falsely implicated in this case by the co-accused and the Investigating Officer could not collect any material during the investigation except the statement of the co-accused recorded u/s 67 of the NDPS Act which he submits is not admissible in evidence in a trial of an offence under NDPS Act, 1985. To support his submission, learned counsel for the petitioner has cited following ruling.

**1. Tofan Singh v. State of Tamil Nadu, reported in (2021)4 SCC 1.**

**2. Narcotic Control Bureau v. Pallulabid Ahmed Arimutta, reported in (2022) 12 SCC 633.**

**6.** On the other hand, learned Addl. PP has vehemently opposed a grant of bail to the present petitioner as on the ground that the contraband seized in this case is of commercial quantity and therefore the embargo of Section 37 of the NDPS Act is applicable to this case. He also submits that it is the present petitioner who hired the auto rickshaw which was seized in this case for carrying the seized contraband as reflected from the statement of the co-accused Ruyel Uddin @ Jahir Uddin which was recorded during the course of investigation.

However, learned Addl. PP fairly submits that apart from the statement of the co-accused, there is no other material on record against the present petitioner and this truthfulness of the statement could only be ascertained during the trial and the case is pending at the stage of furnishing copies to the accused u/s 207 Cr.PC. He has opposed the grant of bail of the present petitioner.

**7.** I have considered the submissions made by learned counsel of both the sides and has perused the materials available on record including the scanned copy of the case record of Special (NDPS) Case No. 35/2023 which was requisitioned in connection with this case.

**8.** It is apparent from record that though the charge-sheet has been laid against the present petitioner along with the two other co-accused u/s 20(b)(ii) (C)/25/29 of the NDPS Act, 1985, however apart from the statement of the co-accused Ruyel Uddin @ Jahir Uddin there is no other evidence on record against the present petitioner and in view of the judgment of the Apex Court in the case of "**Tofan Singh v. State of Tamil Nadu**" (supra), it is no longer *res integra* that a confessional statement recorded u/s 67 of the NDPS Act, 1985 will remain inadmissible in trial of an offence under the NDPS Act, 1985 and therefore there appears to be no admissible evidence against the present petitioner on record to justify his detention and to invoke the embargo of Section 37 of the NDPS Act, 1985 against him in this case. This Court is therefore of the view that in absence of an admissible evidence on record against the present petitioner the petitioner is entitled to get bail in this case.

**9.** Accordingly, the above-named petitioner is allowed to go on bail of Rs. 50,000/- with one surety of like amount subject to satisfaction of the learned Special Judge, Karimganj with following conditions:

- i.** That the petitioner shall cooperate in the trial of 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.

**10.** It is hereby made clear that the observations made herein before in this order has been made only for the purpose of consideration of the instant bail

application and it shall have no implication or bearing on the trial of the Special (NDPS) Case No. 35/2023.

**11.** With the above observations the bail application is accordingly disposed of.

**JUDGE**

**Comparing Assistant**