

GAHC010139812024



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

Case No. : Bail Appln./2056/2024

SHAJAHAN AHMED
S/O ABUL HUSSAIN, R/O JAKIALA, P.O.-ERALIGOOL, P.S.-PATHARKANDI,
DIST- KARIMGANJ, ASSAM

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

Advocate for the Petitioner : MR H R A CHOUDHURY, MS R DEKA, MR. I U
CHOWDHURY, MR. A AHMED

Advocate for the Respondent : PP, ASSAM,

BEFORE

HON'BLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

ORDER

03.12.2024

Heard Mr H R A Choudhury, learned Senior Counsel for the petitioner, Shajahan Ahmed, who has filed this application under Section 483 of the BNSS, 2023, with prayer for bail, as he is behind bars since 04.03.2024, in connection with Special NDPS Case No. 23/2024, arising out of Ratabari PS Case No. 30/2024, registered under Sections 21(b)/21(c)/25/29 of the NDPS Act.

3. Heard Mr D Das, learned Additional Public Prosecutor for the State of Assam.

4. It is submitted on behalf of the petitioner that he is not involved in the incident. During the incident, he was in the jail. Two other persons have been arrested in connection with this case and he was not present at the time of the occurrence.

5. The FIR unfolds that on 10.02.2024, a secret information was received that a four-wheeler vehicle bearing Registration No. MZ 05A 2735, carrying huge amount of contraband kept hidden inside the vehicle's chamber was travelling from Mizoram towards Ratabari PWD Road. An investigating team was formed and a naka-checking was held in front of Ratabari Police Station and the aforementioned vehicle, a Maruti ECO Van approaching from Champai Mizoram towards Patharkandi, was intercepted by the team. Javed Hussain, Driver and Sohail Ahmed were occupying the vehicle and they admitted that drugs was concealed in the secret chamber under the body of the rear seat of the vehicle. On searching the vehicle thoroughly, Yaba tablets were found inside the vehicle, which were seized in connection with this case. The Yaba Tablets were weighed and the driver and the occupant were both arrested. During interrogation, the accused persons revealed that they were about to deliver the Yaba Tablets to a person named Jehirul Islam, who was found sitting inside a vehicle bearing Registration No. AS-11-X-5343 at Ashimganj and he too was arrested in connection with this case. During interrogation of all the apprehended accused persons, it was learnt that the owners of the vehicle are Khumtin Lama and Shajahan Ahmed.

6. It is submitted that the Yaba tablets were recovered from Khumtin Lama and

Shajahan Ahmed is not involved in this case as he did not construct any secret chamber in his vehicle. A total of 150.64 grams of heroin and 19800 Yaba tablets were found and seized in connection with this case.

7. It is further submitted on behalf of the present petitioner that another person was sitting in his vehicle and waiting for the Yaba Tablets and he being the owner has been highly prejudiced as he is not involved in transportation of drugs.

8. It is submitted that the present petitioner has been in custody since 10.02.2024 and he has been shown as arrested in connection with this case on 04.03.2024. No antecedent could be attributed to the petitioner as the petitioner was earlier arrested in connection with a theft case and not in a case relating to transportation of contraband.

9. Learned counsel for the petitioner has relied on the decision of Hon'ble the Supreme Court in *State By (NCB) Bengaluru –Vs- Pallulabid Ahmad Arimutta & Others*, wherein vide order dated 10.01.2022 in connection SLP (Crl.) No. 242 of 2022, and other special leave petitions. The Hon'ble Supreme Court has observed that-

“10. It has been held in clear terms in Tofan Singh Vs. State of Tamil Nadu, that a confessional statement recorded under Section 67 of the NDPS Act will remain inadmissible in the trial of an offence under the NDPS Act. In the teeth of the aforesaid decision, the arrests made by the petitioner-NCB, on the basis of the confession/voluntary statements of the respondents or the co-accused under Section 67 of the NDPS Act, cannot form the basis for overturning the impugned orders releasing them on bail. The CDR details of some of the accused or the allegations of tampering of evidence on the part of one of the

respondents is an aspect that will be examined at the stage of trial. For the aforesaid reason, this Court is not inclined to interfere in the orders dated 16th September, 2019, 14th January, 2020, 16th January, 2020, 19th December, 2019 and 20th January, 2020 passed in SLP (Crl.) No. @ Diary No. 22702/2020, SLP (Crl.) No. 1454/2021, SLP (Crl.) No. 1465/2021, SLP (Crl.) No. 1773-74/2021 and SLP (Crl.) No. 2080/2021 respectively. The impugned orders are, accordingly, upheld and the Special Leave Petitions filed by the petitioner-NCB seeking cancellation of bail granted to the respective respondents, are dismissed as meritless.”

10. It is submitted that only on the basis of the statement of the co-accused, the present petitioner has been incarcerated since 04.03.2024 and his right to personal liberty has been curtailed.

11. The petitioner is willing to cooperate with the trial and he is willing to abide by any stringent bail conditions, if imposed upon him.

12. Learned Additional Public Prosecutor, Mr D Das has raised serious objection.

13. It is submitted that charge sheet has been laid against the petitioner as a *prima facie* case has been established against the petitioner. Trial has not commenced as some accused are yet to appear before the learned trial Court. It is the conduct of the co-accused, which has been procrastinating the trial and not the trial Court or the prosecution.

14. I have considered the submissions at the Bar with circumspection.

15. I have also scrutinized the scanned copies of the Trial Court Record.

16. Indeed, charge sheet has been laid against the petitioner and the co-accused.

17. It is observed from the submissions at the Bar that the petitioner is the owner of the other vehicle, which was used by the accused, Jehirul Islam at the time of the alleged incident and Jehirul Islam was already arrested in connection with this case, where a huge quantity of contraband was seized. The submission that the petitioner's father and Jehirul Islam used the vehicle to provide a lift, and the petitioner is not complicit, however, holds no water. The observation in the case of *Pallulabid Ahmad Arimutta (supra)*, is relating to cancellation of bail already granted, which is not at par with this case.

18. I would like to reiterate that after a thorough investigation, charge sheet has been laid against the petitioner.

19. At this juncture, it cannot be held that the personal liberty of the petitioner has been curtailed, but on the contrary, the rigour under Section 37 of the NDPS Act acts as an embargo.

20. Petition with prayer for bail is rejected at this stage. However, the petitioner is at liberty to file a subsequent bail petition, if the trial is procrastinated any further. The trial Court is directed to expedite the trial by taking appropriate measures.

JUDGE

Comparing Assistant