

GAHC010145142024



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

Case No. : Bail Appln./2149/2024

UBAID ULLAH
S/O LATE JALAL UDDIN, R/O VILL- SALEHPUR, P.O. AND P.S.-
PATHARKANDI, DIST- KARIMGANJ, ASSAM

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

Advocate for the Petitioner : MR H R CHOUDHURY, A S PRODHAN, S. TALUKDAR

Advocate for the Respondent : PP, ASSAM,

BEFORE
HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

ORDER

23.10.2024

1. Heard Mr. H. R. Choudhury, learned counsel for the petitioner Ubaid Ullah.
2. The petitioner has filed this application under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 with prayer for bail as he is behind bars since 26.03.2023 in connection with Special NDPS Case No. 29/2023 arising out of

Karimganj PS Case No. 233/2023 registered under Sections 21(c)/22(c)/25/29 of the NDPS Act, 1985.

3. Heard Mr. K. Baishya, learned Additional Public Prosecutor, Assam for the respondent State.

4. It is submitted on behalf of the petitioner that the petitioner has been incarcerated on the basis of the statements of the accused. The petitioner has relied on the decision of the Hon'ble Supreme Court in *State By (NCB) Bengaluru Vs. Pallulabid Ahmad Arimutta & Anr* reported in 2022 0 Supreme (SC) 56 wherein has been observed that :-

It has been held in clear terms in Tofan Singh Vs. State of Tamil Nadu, (2021) 4 SCC 1. 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.

5. It is further submitted by the learned counsel for the petitioner that all the appellants, A1 to A5 were granted bail by the Hon'ble Supreme Court as the appellants were arrested and forwarded to custody on the basis of voluntary statements of the respondents or the co-accused under Section 67 of the NDPS Act. It is observed by the Hon'ble Supreme Court that voluntary statements or statements of the co-accused cannot form a basis for overturning the impugned orders releasing them on bail.

6. This instant case is not a case for cancellation of bail. This is a case where the petitioner has prayed for bail stating that the present petitioner's case is on the same footing as *Pallulabid Ahmad Arimutta* (Supra), as this petitioner was forwarded to custody only on the basis of statements of the co-accused and on the basis of the details of the CDR records of the petitioner with the other accused arrested in connection with this case. Again, this petition is not for cancellation of bail orders but this petition is a bail petition and it has been observed by the Hon'ble Supreme Court in *Pallulabid Ahmad Arimutta* (Supra) that CDR records cannot form the basis of overturning the impugned orders releasing them on bail. The facts and circumstances of this case is not similar to the facts and circumstances of the case of *Pallulabid Ahmad Arimutta* (Supra).

7. It is further submitted on behalf of the petitioner that the forwarding report clearly reveals that the petitioner was forwarded to custody only on the basis of the details of the CDR that the petitioner was in continuous touch with the other accused who were arrested in connection with this case.

8. The learned Additional Public Prosecutor has raised serious objection stating that the petitioner is involved in a case where a truck was apprehended

carrying an assortment of contraband including 80,000 Yaba tablets and 2.8 kgs of heroin. The petitioner's involvement has surfaced during the investigation and charge-sheet has been laid against the petitioner.

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

10. It is true that initially the petitioner was not apprehended along with the other accused namely Sophik Miah and RamNath Gowala. The petitioner's involvement has surfaced during the course of investigation. The facts and circumstances of this case is not at all similar to the facts and circumstances of the case as referred to by the petitioner in *Pallulabid Ahmad Arimutta* (Supra).

11. This is not a petition with prayer for cancellation of bail already granted to the petitioner. One accused, Madhab Sarkar is absconding. Trial has not yet commenced. It is not only on the statement of the accused that the petitioner has been apprehended. The petitioner's involvement has surfaced during the investigation. It is true that the petitioner has been behind bars for 1 year 6 months and 26 days but at the same time the petitioner's bail application is being fettered by the rigours of Section 37 of the NDPS Act.

12. At this juncture, this Court is hesitant to grant bail to the petitioner. I have also considered the gravity of the offence and the facts and circumstances of this case. At this stage, petition with prayer for bail is rejected. However, the petitioner is at liberty to file a subsequent bail petition in case, the trial is procrastinated any further.

The Trial Court is directed to expedite the trial for speedy disposal of the case.

JUDGE

Comparing Assistant