

GAHC010146682024



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

Case No. : Bail Appln./2238/2024

ISLAM UDDIN
S/O LATE ATAUR RAHMAN, R/O VILL- BALIA, P.O.-GHULCHARA, P.S.-
NILAMBAZAR, DIST-KARIMGANJ, ASSAM

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

Advocate for the Petitioner : MR H R CHOUDHURY, MR R.AHMED,MS LR KHANAM,A S
PRODHANI,S. TALUKDAR

Advocate for the Respondent : PP, ASSAM,

BEFORE
HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

ORDER

27.08.2024

1. Heard learned counsel Mr. H. R. Choudhury for the petitioner Islam Uddin.
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 27.10.2022 in connection with Special NDPS Case No. 152/2022 (Badarpur Case

No. 250/2022) registered under Sections 21(c)/25/29 of the NDPS Act.

3. Heard Mr. M. P. Goswami, learned Additional Public Prosecutor, Assam for the respondent State.

4. The FIR unfolds that an information was received by the Additional S.P., Headquarter, Karimganj on 27.10.2022, that a large quantity of contraband was being transported from Mizoram to Karimganj via NH-37 in an Alto car bearing registration No. AS-01-D-7320. After receiving the information, a Naka checking was held at Alakulipur Kabarsthan near NH-37. At around 12:10 p. m., the aforementioned vehicle was spotted and the investigating team detained the vehicle which was searched. The petitioner along with the other four accused were traveling in the vehicle. On being confronted, the petitioner and the accused admitted that the contraband was kept on the rear side of the vehicle's dickey. 48 packets of heroin was recovered. The heroin weighed 621.09 grams. The learned counsel for the petitioner has laid stress in his argument that the petitioner is innocent and he was travelling in the vehicle. It is submitted that the petitioner is only 18 years old. He has been behind bars since 27.10.2022.

5. The petitioner has prayed for bail on the ground of parity as all the other co-accused have been enlarged on bail. It is submitted that the electoral ID card annexed in the petition clearly reveals that the petitioner is a young lad who is only 18 years old who was absolutely unaware of the consequences of taking lift in the vehicle, which has landed him in jail. It is submitted that the petitioner's right to liberty has been curtailed as for more than 1 year 10 months, not a single witness has been examined.

6. The learned Additional Public Prosecutor has raised serious objection stating that the rigor under Section 37 of the NDPS Act fetters grant of bail. He has

raised serious objection stating that Charge-sheet has been laid against the petitioner, and at this juncture, after submission of Charge-sheet, the petitioner cannot claim his innocence. It is submitted that the petitioner will be emboldened by this bail order, and there is every possibility that he might commit such an offence again.

7. I have considered the submissions at the Bar with circumspection. I have considered the age and antecedent of the petitioner. I have also considered the length of detention. I have considered the peculiar facts and circumstances of this case which is not similar to the facts and circumstances of other cases of similar nature.

8. I have also scrutinized the Trial Court Records. It is true that not a single witness has been examined. It cannot be ignored that the petitioner has been behind bars for almost 2 years. Thus, the precious fundamental right of liberty militates against the double pronged conditions of Section 37 of the NDPS Act.

9. Considering the peculiar facts and circumstances of the case, petition is allowed. The petitioner shall be enlarged on bail of Rs. 1 lac with a local surety of like amount to the satisfaction of the learned Trial Court under the conditions that :

- (i) The petitioner shall refrain from such activities with which he is alleged,
- (ii) The petitioner shall co-operate with the trial and appear regularly before the trial court, and
- (iii) The petitioner shall not leave the jurisdiction of the Court without permission of the learned Trial Court till completion of Trial.

10. On breach of any of the bail conditions, bail order shall automatically stand cancelled and the Trial Court will be at liberty to immediately cancel the bail order.
11. Send back the Case Diary.
12. In terms of the above observation, bail application stands disposed of.

JUDGE

Comparing Assistant