

GAHC010152442024



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

Case No. : Bail Appln./2236/2024

JAHIRUL ISLAM
S/O AZIZUR RAHMAN, R/O VILL- NAYAGRAM, P.S.-NILAMBAZAR, DIST-
KARIMGANJ, ASSAM

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

Advocate for the Petitioner : MR. A B T HAQUE,

Advocate for the Respondent : PP, ASSAM,

BEFORE
HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

ORDER

Date : 10.09. 2024

1. Heard Mr. A.B.T Haque, learned counsel for the petitioner, Jahirul Islam, who has filed this bail application under Section 483 of BNSS, 2023, with prayer for release on bail in connection with Special NDPS Case No. 23/2024 (arising out of Ratabari Case No. 30 of 2024) under Sections 21(b)/22(c)/25/29 of the

NDPS Act, pending in the Court of the learned Sessions Judge, Karimganj.

2. Also heard Ms. N. Das , learned Addl. Public Prosecutor for the State respondent.

3. The learned Addl. P.P. has raised objection against the prayer of bail as the accused/ petitioner who was in possession of the contraband of commercial quantity recovered in connection with this case.

4. It is submitted on behalf of the petitioner that the petitioner was arrested on 10.02.2024 and has been in judicial custody for last 7 months. The learned counsel for the petitioner has relied upon the decision in the case of State By (NCB) Bengalurue Vs. Pallulabid Ahmad Arimutta & Anr. in connection with Petition for Special Leave to Appeal (Crl.) No. 242/2022 arising out of Diary No. 22702 of 2020 vide order dated 10.01.22 in paragraph 10, wherein it has been held that:-

“ 10. It has been 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 CRD details of some of the accused or the allegation of tempering 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. I have considered the submissions at the bar with circumspection.

6. Ms. N. Das has submitted that charge sheet has been filed on 09.05.2024 and FIR was lodged on 10.02.2024. The embargo of Section 37 of the NDPS Act restricts bail in offences, where allegation of transportation of contraband is of commercial quantity. Charge sheet has been laid against the petitioner under Section 21(b)/22(C)/25/29 of the NDPS Act.

7. At this stage without proper evidence, it cannot be concluded only on the basis of the statement of the co-accused that the petitioner has been arrested in connection with this case. This case is at the nascent stage of proceeding. Trial court record reveals that the charges have not been framed in this case. Rigours of section 37 of the NDPS Act indeed restricts bail.

8. The petition is dismissed.
9. Trial court is directed to expedite the trial for speedy disposal of the case.

JUDGE

Comparing Assistant