

GAHC010153322024



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

Case No. : Bail Appln./2261/2024

MD NAZIM UDDIN
S/O LATE ABDUL KHALIQUE, VILL- SURJADAS, P.S. AND P.O.-KARIMGANJ,
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

HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

03/09/2024

Heard Mr. H R Choudhury, learned counsel for the petitioner and Mr. R J Baruah, learned Additional Public Prosecutor, Assam.

2. By this application under Section 439 Cr.P.C., the petitioner, namely, Md. Nazim Uddin, son of Late Abdul Khalique is seeking bail in Special (NDPS) Case No. 50/2022 presently pending before the Court learned Special Judge (NDPS), Karimganj arising out of Karimganj Police Station Case No.

211/2022 corresponding to G.R. No. 657/2022 under Section 22(c) of the NDPS Act, in which he was arrested on 25.03.2022, and since then, he is in custody for about 2½ years.

3. It is submitted on behalf of the petitioner that he has been falsely implicated in the case as he is neither a driver nor the owner of the seized Magic Truck bearing registration Car No. AS-10C-3623 where the petitioner was found inside the said vehicle and a bucket was found inside the back compartment of the said seized Magic truck which does not amount to conscious possession by the alleged accused, i.e., the petitioner.

4. It is also stated that police did not interrogate and/or arrested Md. Babul Ali, the owner of the said seized Magic vehicle nor arrested the driver of the said vehicle. Petitioner contended that police not only arrested him in the case but also charge-sheeted him in it who is an innocent person found sitting inside the vehicle seized in the case.

5. It is also submitted on behalf of the petitioner that as of now four prosecution witnesses have been examined by the learned Trial Judge and that the seizure witnesses did not support the case of the prosecution under Section 22(c) of the NDPS Act. It is also stated that charge was framed on 27.09.2022 and thereafter, only four prosecution witnesses have been examined up to June, 2024.

6. Considering the fact that charge-sheet in the case was filed on 16.06.2022, charge under Section 22(c) of the NDPS Act was framed on 27.09.2022 and thereafter, only four prosecution witnesses have been examined up to June, 2024, the petitioner is seeking bail in said Special (NDPS) Case No. 50/2022 arising out of Karimganj P.S. Case No. 211/2022 who is in custody since 25.03.2022.

7. The petitioner relied on the decisions of the Hon'ble Supreme Court in the case of *Rabi Prakash Vs. State of Odisha*, decided on 13.07.2023, *Md. Mohd. Muslim @ Hussain Vs. State (NCT of Delhi)*, decided on 28.03.2023 and a decision of a Co-ordinate Bench of this High Court in the case of *Aftar Hussain Vs. State of Assam*, decided on 01.12.2023 in B.A. No. 4158/2023.

8. From the records of the case that was called for by order dated 05.08.2024, it is seen that on the basis of reliable information received from source by in-charge of Kaliganj WP PP on 24.03.2022 around noon that large quantity of narcotic drugs including YABA tablets and brown sugar have been carried by drug peddler belonging to Kaliganj area towards Kaliganj side via DIET Kaliganj route coming in a Magic truck who is likely to deliver the consignment to other peddler before 2:00 PM on the same date. Accordingly, General Diary entry was made vide Kaliganj PP WP G.D. Entry No. 306

dated 24.03.2022. Considering the urgency, verbal information was immediately made to the SP, Karimganj, Deputy SP (HQ), Karimganj over phone. After proper authorization the concerned police officer proceeded towards DIET Kaliganj and reaching the spot around 1:00 PM on 24.03.2022, the petitioner was found sitting inside the Tata Magic Car bearing registration No. AS-10C-3623 that was standing near DIET Kaliganj on PWD road and the said vehicle was accordingly cordoned. Inside the said vehicle the petitioner, who is from Village-Seki Kanishail under Karimganj Police Station was found sitting. During search of the said vehicle, one bucket was found inside its back compartment and the said bucket contained 2 plastic/paper wrapped bundles. On opening the two bundles, from one, 50 nos. of black colour small plastic packets each containing suspected YABA tablets weighing about 21.43 gms. each, equal to 1.072 kgs. (21.43 gms. x 50), whereas the other packet found containing 44 nos. of black colour small plastic packets each containing suspected YABA tablets weighing about 20.00 gms. each, equal to 0.942 kgs. (20 gms. x 44), in total 2.014 kgs. All the seized suspected narcotic drugs including YABA tablets, the vehicle concerned and apprehending the petitioner the FIR was lodged before Karimganj Police Station on 25.03.2022 and the petitioner was produced before the learned Chief Judicial Magistrate, Karimganj accordingly. Notice under Section 50 Cr.P.C. was issued on the petitioner on 25.03.2022. The FSL report dated 21.05.2022 of the seized suspected YABA tables gave positive tests for Methamphetamine. After completion of the investigation, the concerned Investigating Officer submitted the charge-sheet against the petitioner on 16.06.2022 under Section 22(c)/25 of the NDPS Act. The seized truck had only the petitioner who failed to state as to how he was inside it.

9. It is seen from the records of the case that charge under Section 22(c) was framed by the learned Special Judge (NDPS), Karimganj on 27.09.2022 in Special (NDPS) Case No. 50/2022. As per the charge-sheet there are all together 12 prosecution witnesses including the Investigating Officer of the case, seizure witnesses etc.

10. The judgment of the Hon'ble Supreme Court relied by the petitioner, noted above, are not applicable in the present case as in the first case, the accused was in custody for more than 3½ years and in the second case, the accused was in custody for more than 7 years 5 months.

11. In the case with regard to the Co-ordinate Bench of this Court while granting bail on 01.10.2023, it is seen that all together 940 gms. of YABA tablets were recovered and the prosecution witnesses consistently remained absent on 13 dates and further the independent seizure witnesses became hostile who did not support the prosecution case.

12. In the case in hand, it is seen that there was specific report regarding carrying of large number of narcotic drugs pursuant to which G.D. Entry was made on 24.03.2022 around noon and an amount of 2.014 kgs. of YABA tablets recovered which the FSL report clearly indicates to be of Methamphetamine.

13. The case record also reveals that only four witnesses out of 12 such prosecution witnesses have been examined and that the matter was also adjourned at the request of the defence on numbers of occasions.

14. Considering the above and recovery of large amount of narcotic drugs of Methamphetamine, the Court is of the view that it is not a fit case to grant bail to the petitioner, namely, Md. Nazim Uddin in said Special (NDPS) Case No. 50/2022 arising out of Karimganj P.S. Case No. 211/2022 considering his length of detention since 25.03.2022.

15. Accordingly, this bail application of the petitioner, named above, in Special (NDPS) Case No. 50/2022 arising out of Karimganj P.S. Case No. 211/2022 stands rejected.

JUDGE

Comparing Assistant