

GAHC010211272023



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

Case No. : Bail Appln./3329/2023

ABDUL KADIR LASKAR
S/O- LT. MUSABBIR ALI LASKAR, VILL- HAWAITHANG, P.O.
HAWAITHANG, P.S. DHOLAI, DIST.- CACHAR, ASSAM, PIN- 788120

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

Advocate for the Petitioner : MR. P K DEKA

Advocate for the Respondent : PP, ASSAM

B E F O R E
HON'BLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

26.02.2024

- 1.** Heard Mr. P.K. Deka, learned counsel for the petitioner and Mr. M.P. Goswami, learned Addl. PP for the respondent State.
- 2.** The petitioner namely, Abdul Kader Laskar has filed this application under Section 439 Cr.PC with prayer for bail as he is behind bars since 22.03.2023 in connection with Special NDPS Case No. 8/2023 arising out of Karimganj P.S. Case No. 50/2023, G.R.

Case No. 155/2023 u/s 22(C)/25/26 of the NDPS Act.

3. It is submitted that the petitioner is not an FIR named accused. The co-accused Kabir Uddin @ Rehan Uddin has already been enlarged on anticipatory bail. The co-accused was the FIR named accused. During investigation only one mobile phone was recovered from the possession of the petitioner. The contraband was not seized from the possession of the petitioner. The trial court rejected the bail on assumption that the petitioner is complicit. It is submitted that the personal liberty of the petitioner has been curtailed.

4. On the contrary the learned Addl. PP has raised serious objection against the bail petition stating that charges were not framed till 14.08.2023 but at the same time this cannot be considered to be a case where the personal liberty has been curtailed. The learned Addl. PP has raised serious objection stating that the rigour of Section 37 of the NDPS Act, acts as an embargo.

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

6. The FIR unfolds that an information was received by the OC, Karimganj PS that a large quantity of narcotics drugs was being transported by one drug trafficker in Bagargool area and he has been detained by the Bagargool AD Camp staff. The OC then along with the police party went to the place of occurrence and saw the vehicle bearing registration No. AS-10-A-6487 parked at the road and the villagers and VDP members have detained a person named Haiduz Zaman. Investigation was conducted as per proper procedure and Yaba tablets weighing upto 87.49 kgs was recovered. The person Haiduz Zaman revealed the name of Samin Uddin during interrogation and Samin Uddin was pursued but he managed to escape. It was further unearthed that the vehicle was registered in the name of Hassanuddin who has given his vehicle for the purpose of drug trafficking.

6. The learned counsel for the petitioner has drawn the attention of this Court towards the named accused-persons in the FIR and has submitted that the petitioner

has not been named in the FIR.

7. I have considered the submission of the learned Addl. PP that at this stage when charge-sheet has been laid, the merits of the case cannot be brought to the fore until and unless trial commences. The scanned copies of the LCR reveal that charge has not been framed. Trial is yet to commence. The conduct of the accused has procrastinated this case. At this stage it cannot be held that the prosecution or the Court has procrastinated the case entailing curtailment of personal liberty of the petitioner as guaranteed by Article 21 of the Constitution of India. Indeed the rigour of Section 37 of the NDPS Act, acts as an embargo.

8. At this juncture I am not inclined to grant bail to the petitioner. Petition with prayer for bail is rejected at this stage.

9. The trial Court is directed to take measures and to make every endeavour to commence the trial atleast against the appearing accused-persons.

10. If trial is procrastinated any further the petitioner is at liberty to apply for bail which may be considered by the Court as per merits of the case.

JUDGE

Comparing Assistant