

GAHC010253202023



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

Case No. : Bail Appln./4093/2023

MOHD. ARIF @ MD. ARIF
S/O- ABDUL HUSAIN, R/O- ISLAM NAGAR, WARD NO. 03, P.O. AND P.S.
SITARGANJ, DIST. UDHAM SINGH NAGAR, UTTARAKHAND, PIN- 262405

VERSUS

THE UNION OF INDIA
REPRESENTED BY THE COUNSEL OF NARCOTICS CONTROL BUREAU,
GUWAHATI ZONAL UNIT, GUWAHATI

Advocate for the Petitioner : MR J ISLAM

Advocate for the Respondent : SC, NCB

BEFORE
HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

ORDER

Date : 09-02-2024

Heard Mr. J. Islam, learned counsel for the petitioner *Mohd. Arif @ Md. Arif.*

2. The petitioner has filed this application under Section 439 of the Code of Criminal Procedure, 1973 with prayer for bail as he is behind bars since

12.07.2022 in connection with NDPS Case No. 8/2023 (corresponding to NCB Crime No. 20/2022) under Sections 8(c)/20(b)(ii)(C)/29 of the NDPS Act.

3. It is submitted on behalf of the petitioner that the petitioner's personal liberty has been curtailed. 5 (Five) people have been apprehended since 11.07.2022 but trial has not yet commenced. The petitioner's right to liberty as guaranteed by Article 21 of the Constitution of India has been curtailed.

4. The learned Standing Counsel for the NCB, Mr. S.C. Keyal has submitted that final report was submitted on 06.01.2023 and thus this case cannot be considered to be a case where right to personal liberty has been curtailed. The rigour under Section 37 of the NDPS Act acts as an embargo.

5. I have considered the submissions at the bar and I have also scrutinized the scanned copies of the LCR.

6. The FIR unfolds that on 11.07.2022 at about 1000 hours a tip off was received that the petitioner, a resident of Uttarakhand, will be carrying a huge quantity of Ganja from Agartala to Bihar which was concealed in a false cavity in the loft of the driver's cabin of the truck bearing registration No. UK 06 CA 7169 and the petition would arrive in the area between Khanapara and Basistha Chariali on 11.07.2022 between 1600 hrs to 1900 hrs from Jorabat side. The investigating team as per proper procedure conducted the investigation and the aforementioned truck was stopped by the team. The petitioner was the only occupant of the truck. As per proper procedure, search was conducted and the secret cavity was revealed after the lid was removed with the help of a screwdriver. 297.520 KGs of Ganja was recovered from the conscious possession of the petitioner and investigation thus commenced.

7. It was unearthed during investigation that 5 (Five) accused working in

tandem have been involved in drug trafficking and final report was submitted. Only the present petitioner and another accused Gurvinder Singh are behind bars. NBWA has been issued against other three accused. Final report was submitted on 06.01.2023 and trial has not yet commenced as 3 (Three) accused are evading appearance. It is true that there is a delay in the commencement of the trial. Charges have not been framed but at the same time the rigour of Section 37 of the NDPS Act acts as an embargo. It is not discernable at this stage that this proceeding may entail in acquittal. The trial Court may expedite the proceeding by splitting up this case against the accused persons who have already been forwarded to custody in connection with this case while an endeavour may be made to apprehend the other accused persons who are evading arrest.

8. The decision of Hon'ble the Supreme Court in *Mohd Muslim @ Hussain Vs. State (NCT of Delhi)* reported in (2023) 0 AIR (SC) 1648 is not relevant to this case. The appellant Mohd Muslim @ Hussain was languishing in the jail for 7 (Seven) years and it was held that at the time of arrest he was not found in conscious possession of contraband. In this case there appears to be no justified ground to grant bail to the petitioner.

9. Petition is rejected at this stage. However, if the proceeding is procrastinated any further, the petitioner is at liberty to apply for bail which may be considered by the Court as per merits of this case.

In the above terms this Bail Application stands disposed of.

JUDGE

Comparing Assistant