

GAHC010266292023



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

Case No. : Bail Appln./4335/2023

RUYEL UDDIN @ JAKIR UDDIN @ JAHIR UDDIN
S/O ABDUL KHALIK, R/O KACHUBARI, P.S.-PATHARKANDI, DIST-
KARIMGANJ, ASSAM

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

Advocate for the Petitioner : MR. A AHMED

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

02.04.2024

Heard Mr. A. Ahmed, learned counsel for the petitioner. Also heard Mr. R.J. Baruah, learned Additional Public Prosecutor, appearing for the State of Assam.

This application under Section 439 of the Code of Criminal Procedure, 1973 has been filed by the petitioner, namely, Ruyel Uddin @Jakir Uddin @ Jahir

Uddin, who has been detained behind the bars since 13.04.2023 in connection with Special (NDPS) Case No. 35/2023.

The gist of accusation in this case is that on 12.04.2023, one Asish Mahanta, SI of Police of Kathaltali Watch Post had lodged an FIR before the Officer-In-Charge of Bazaricherra Police Station, *inter-alia*, alleging that on receipt of an information through reliable sources, a Naka Checking was conducted near Kurti bridge on National Highway No. 208 A and during the Naka Checking one Bajaj auto rickshaw bearing Registration No. AS-10-AC-8213 was intercepted and during search of the said vehicle 41 numbers of packets of suspected ganja wrapped in plastic papers were recovered and on weighing the recovered ganja, it was found that the weight of the same was found to be 191.005 kgs.

The learned counsel for the petitioner has submitted that the petitioner is the driver of the auto rickshaw from which the contraband was seized and he was hired by one Ali Afzal to transport some goods from Kurti to Chandkhira and he was not aware that the goods which were transported in his auto rickshaw were ganja.

It is submitted by the learned counsel for the petitioner that as the petitioner was ignorant about the goods being carried by him, it cannot be treated that he was in conscious possession of the seized contraband.

On the other hand, Mr. R.J. Baruah, learned Additional Public Prosecutor has opposed the grant of bail to the present petitioner on the ground that the quantity of contraband seized in this case is of commercial quantity and therefore, the embargo of Section 37 of the NDPS Act, 1985 is applicable in this case, and there are materials to show that the ganja which has been recovered in this case was seized from the vehicle which was driven by the present

petitioner.

I have considered the submissions made by the learned counsel for both the sides and have perused the materials available on record, including the case record of Special (NDPS) Case No. 35/2023.

It appears from the record that after investigation, the charge sheet has been laid against the present petitioner along with three other co-accused persons under Section 20(b)/(ii)(C)/25/29 of the NDPS Act, 1985 and the case is still pending at the investigation stage.

It also appears that apart from the mere denial by the present petitioner that he was not in a conscious possession of the seized ganja there is nothing to substantiate his submissions to this effect, on the other hand, there are incriminating materials in the case record against the present petitioner and as the present case involves contrabands of commercial quantity, the embargo of Section 37 of the NDPS Act, 1985 is applicable to this case and this court is of the considered opinion that the petitioner has not been able to overcome the said embargo.

Hence, the prayer for bail is rejected at this stage.

JUDGE

Comparing Assistant