

GAHC010287762023



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

Case No. : Bail Appln./4628/2023

ISLAM UDDIN
S/O LATE ATAUR RAHMAN
VILL- BALIA, P.O. GHULCHARA
P.S. NILAMBAZAR, DIST. KARIMGANJ, ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR H R CHOUDHURY

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

ORDER

Date : 22-05-2024

Heard Mr. H.R.A. Choudhury, learned Senior Counsel for the petitioner Islam Uddin.

2. The petitioner has filed this application under Section 439 of the Code of Criminal Procedure, 1973 (CrPC for short) with a prayer for bail as he is behind bars since 27.10.2022 in connection with Special NDPS Case No. 152/2022

arising out of Badarpur Police Station Case No. 250/2022 under Sections 21(c)/25/29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (the NDPS Act for short).

3. Heard Ms. A. Begum, learned Additional Public Prosecutor, Assam for the respondent State.

4. It is submitted on behalf of the petitioner that he is a young man only 18 (Eighteen) years old. He lost his father at a very young age and to maintain the livelihood, he had to go to the Aizawl, Mizoram where he used to sell small items like clothes and toys in the footpath. On the day of the incident, he received information that his mother was seriously ailing. The petitioner boarded the vehicle for a fare of Rs.1,000/- (Rupees One Thousand). The accused No. 2 named in the FIR was the driver of the vehicle. The petitioner was not wary that contraband was being carried in the vehicle.

5. The learned Additional Public Prosecutor has raised serious objection stating that charge sheet has been laid against the petitioner which indicates that there are prima facie materials against the petitioner. The contraband recovered from the vehicle is of a huge amount of 621.09 grams of heroin.

6. I have considered the submissions at the bar with circumspection.

7. The FIR unfolds that a tip off was received by the Investigating Team that a large quantity of contraband was to be transported from Mizoram to Karimganj via NH 37 in one Alto car bearing registration No. AS-01-D-7320. A naka checking was held and the aforementioned vehicle was detained and 3 (Three) suspects namely Islam Uddin (petitioner), Hussain Ahmed and Abdul Latif were apprehended. On being confronted, the suspects stated that the contraband was recovered from the dicky of the vehicle. As there was no

requirement for searching body of the suspects, the vehicle was searched and the contraband was recovered and seized in connection with this case.

8. The petitioner has prayed for bail on the ground of parity as vide order dated 11.12.2023 in Bail Application No. 2106/2023 and order dated 11.12.2023 in Bail Application No. 2979/2023, the co-accused have been granted bail in connection with this case. It was submitted before this Court in connection with Bail Application No. 2106/2023 that the co-accused Abdul Latif was travelling as a passenger by paying a fare of Rs.700/- (Rupees Seven Hundred) whereas the co-accused Hussain Ahmed being the driver was innocent and he was not wary that there was contraband in the dickey of the vehicle.

9. Only 3 (Three) persons were found inside the vehicle by the Investigating Team and it is not fathomable that all the 3 (Three) persons i.e. the petitioner and the co-accused who were granted bail are all innocent. Earlier bail was granted to Abdul Latif as he had submitted that he was travelling as a passenger in the vehicle and it was also taken into consideration that he was behind bars for 410 (Four Hundred and Ten) days. Till then, not a single witness was examined. On the other hand, the driver Hussain Ahmed was behind bars for 409 (Four Hundred Nine) days and not a single witness was examined in connection with this case.

10. The learned Additional Public Prosecutor has submitted that this case is fixed for evidence. At this juncture bail may not be granted.

11. I have scrutinized the scanned copies of the Trial Court Records.

12. Charge was framed on 02.08.2023. It is true that not a single witness has been examined so far, since the commencement of trial. 10 (Ten) witnesses are enlisted as cited witnesses in the charge sheet. It is true that the petitioner is

behind bars since 27.10.2022. At this juncture it cannot be considered and decided that trial has been procrastinated by the prosecution and by the Court. The petitioner is booked in a serious offence and charge sheet has been laid against him on finding prima facie materials of carrying 621.09 grams of heroin.

13. It has been observed by the Hon'ble Supreme Court in ***Tarun Kumar -Vs- Assistant Director, Directorate of Enforcement;*** reported in **(2023) 4 Crimes (SC) 442**, that-

“19. It is axiomatic that the principle of parity is based on the guarantee of positive equality before law enshrined in Article 14 of the Constitution. However, if any illegality or irregularity has been committed in favour of any individual or a group of individuals, or a wrong order has been passed by a judicial forum, others cannot invoke the jurisdiction of the higher or superior court for repeating or multiplying the same irregularity or illegality or for passing similar wrong order. Article 14 is not meant to perpetuate the illegality or irregularity. If there has been a benefit or advantage conferred on one or a set of people by any authority or by the court, without legal basis or justification, other persons could not claim as a matter of right the benefit on the basis of such wrong decision.”

14. In view of my foregoing discussions, petition with prayer for bail is rejected at this stage. The Trial Court is directed to expedite the trial. The petitioner is at liberty to apply for bail later if trial is procrastinated any further.

15. In the above terms and observations this Bail Application stands disposed of.

JUDGE

Comparing Assistant