

GAHC010017802024



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

Case No. : Bail Appln./397/2024

TAJ UDDIN
VILL BATOIYA PO MULLAGANJ BAZAR PS NILIMBAZAR DIST
KARIMGANJ ASSAM,
PIN-788719

VERSUS

THE STATE OF ASSAM
TO BE REP BY THE PP, ASSAM

Advocate for the Petitioner : MR H R A CHOUDHURY

Advocate for the Respondent : PP, ASSAM

BEFORE
HON'BLE MR. JUSTICE SOUMITRA SAIKIA
ORDER

07.03.2024

Heard Mr HRA Choudhury, learned Senior Counsel, assisted by Mr R A Choudhury, learned counsel for the petitioner. Also heard Mr B Sarma, learned Additional Public Prosecutor for the State of Assam.

2. This bail application has been preferred by the petitioner, Taj Uddin seeking bail as he was arrested in connection with Karimganj Special (NDPS) Case No. 197/2022,

arising out of Bazaricherra PS Case No. 197/2022, under Sections 21(C)/25/29 of the NDPS Act, 1985, which is presently pending before the learned Special Judge, Karimganj.

3. By an FIR dated 12.11.2022 lodged by the informant one SI Jyoti Prasad Das alleging that on 11.11.2022 upon receiving information from Addl. SP (HQ), Karimganj that one suspected person who was driver of a Mahindra Bolero bearing registration No. MZ 01G 3542 was supposed to traffic a huge quantity of drugs concealed in his vehicle from Mizoram and transported to Bangladesh via Assam. At the designated place, they saw the vehicle was arriving which was intercepted and found one driver inside the vehicle. Immediately the vehicle was cordoned off and the driver was asked to come down. In the presence of independent witnesses, the vehicle was thoroughly searched and the contraband narcotics drugs which were concealed inside the secret chamber under the floor in the seat of the vehicle were recovered. A total of 117 Nos. of soap cases containing suspected heroine inside the plastic bag. Amongst the items seized from the car, one sale-deed relating to vehicle No. MZ 01G 3542 vide certificate No. IN-AS25567898559314U was also seized. On spot interrogation, while apprehending, the driver stated that the seized contraband drugs belonged to one Nazim Uddin and his elder brother Jamal Uddin. It was stated by the driver that another set of persons who were travelling in a vehicle bearing No. AS 10D 5131 were also involved. On the information received from the arrested driver, the said vehicle was also seized at another place, although the inmates and the driver of that vehicle escaped taking advantage of darkness. This FIR was received and registered as BCR PS Case No. 197/2022 under Sections 21(c)/25/29 of the NDPS Act. Pursuant to the registration of the FIR, the petitioner was arrested.

4. The case projected by the petitioner is that he was the owner of the vehicle bearing Registration No. MZ 01G 3542. But the vehicle was sold to one Abul Hussain vide Sale Deed dated 03.09.2022, although official formalities regarding the transfer of the vehicle

was pending. It is this vehicle from which the contraband narcotics was seized by the Police on 11.11.2022.

5. It is submitted on behalf of the petitioner that at the time of recovery and seizure of the contraband narcotics from the said vehicle, he was neither present at the place of occurrence or inside the vehicle, nor was the vehicle under his control, as the vehicle was already sold to the said Abul Hussain. It is the submission of the learned counsel for the petitioner that the sole ground for the petitioner's arrest was that he was the owner of the vehicle notwithstanding that the seized contraband narcotics were never recovered from his conscious possession. The petitioner had approached this Court earlier by filing Bail Application No. 2318/2023, and by order dated 18.10.2023, the same was rejected.

6. As the charge sheet in the matter was already filed, scanned copy of the case records of Karimganj Special (NDPS) Case No. 197/2022, was called for. The scanned copy called for has been received by the Registry and the same is placed before the Court.

7. The learned counsel for the petitioner submits that there is absolutely no material for arresting the petitioner and keeping him under prolonged detention. It is submitted that there is no allegation either in the forwarding report or even in the charge sheet which is filed regarding involvement of the petitioner. The only ground of arrest was on the basis of copy of sale deed which was recovered from the vehicle, which showed that the petitioner was the owner. Under such circumstances, there is no need for further detention of the petitioner. It is submitted by the learned Senior Counsel for the petitioner that the earlier bail petition being Bail Application No. 2318 of 2023 was rejected on the ground that the charge sheet at the relevant point of time was filed and no evidence was adduced. Learned counsel for the petitioner submits that the co-accused Jamaluddin, who was also arrested in connection with the said matter was released by the order dated 29.11.2023, passed in Bail Application No. 2540/2023, by a coordinate Bench of this Court. It is submitted that charge sheet has now been filed and the trial

having commenced and evidences are being adduced by the learned trial Court, further detention of the petitioner is not necessary. He will abide by all conditions given by this Court and will appear on each and every date before the learned trial Court during the trial.

8. Mr HRA Choudhury, learned Senior Counsel for the petitioner, reiterates his submissions by placing reliance on the judgment of Hon'ble the Apex Court in ***Balwinder Singh –Vs- Asstt. Commissioner, Customs and Central Excise;*** reported in **(2005) 4 SCC 146**, to submit that even assuming do not admitting that the petitioner is still treated to be a owner of the vehicle, mere recovery of the narcotics from the vehicle is not sufficient to attribute any involvement of the petitioner in respect of the contraband narcotics seized and there is no evidence to show that the petitioner had any control over the vehicle or that he was in possession of these drugs.

9. Per contra, Mr B Sarma, learned Additional Public Prosecutor submits that the trial has commenced and at this stage, the grant of bail to the petitioner will hamper the progress of the trial. He submits that in so far as the sale deed is concerned by order dated 20.12.2023, the learned trial Court while rejecting the bail had recorded a finding that the sale deed which was submitted did not contain the signature of the buyer and, therefore, it cannot be relied upon. He further submits that the co-accused, namely, Jamaluddin, who was granted bail by a coordinate Bench of this Court has failed to appear before the learned trial Court as required, during the course of the trial. Under such circumstances, it is submitted that there is no necessity for release of the petitioner at this stage. It is further submitted that no new ground has been urged, requiring this Court to re-consider the bail of the petitioner.

10. Learned counsel for the parties have been heard. The bail petition has been perused. The scanned copies of the case records connected to Karimganj Special (NDPS) Case No. 197/2022, called for by the Registry and placed before this Court have also been carefully perused.

11. It is seen that the petitioner was taken into custody on 02.05.2023 and since his date of arrest he has remained in custody. Perusal of the charge sheet does not reveal any specific allegation against the petitioner. No material is available before this Court at this stage to come to a conclusion that the petitioner is involved in this case. The trial has progressed although only one witness has so far been examined. No materials are seen at this stage which remotely connect the petitioner to the offence alleged. From the materials placed before this Court at this stage, *prima facie*, does not appear to the Court that it may lead to conviction of the petitioner. As discussed above, the only ground of arrest as shown in respect of the petitioner that he was the owner of the vehicle bearing Registration No. MZ 01G 3542, from which the contraband narcotics were recovered. From the materials available it is seen that there is no dispute that the petitioner was not present at the place of occurrence or inside the vehicle or at the time the seizure was made. Materials during the investigation also directly or indirectly implicate the petitioner at this stage. The Court has also noted that the other coordinate Bench in Bail Application No. 3424 of 2023 (*Shamil Uddin –Vs- The State of Assam*), had rejected the bail applications of other co-accuseds on the grounds and reasons mentioned therein.

12. On the other hand, by order dated 29.11.2023, passed in Bail Application No. 2540 of 2023 (*Jamal Uddin –Vs- The State of Assam*), another coordinate Bench has granted bail to another co-accused.

13. As have been discussed above, from the materials placed before the Court, the Court does not find any specific material at this stage, which can be used to implicate the petitioner other than the fact that he was the owner of the vehicle bearing registration No. MZ 01G 3542, from which the contraband narcotics was recovered and at the time of seizure, the petitioner was neither present in the vehicle nor at the place of occurrence. Hon'ble the Apex Court in *Balwinder Singh (supra)*, while deciding the criminal appeal where the appellant was convicted solely for the reason that he was the registered owner of the vehicle from where the contraband narcotics was seized. In the

case before Hon'ble the Apex Court, there was no evidence to prove that he knowingly allowed any person to use the vehicle for any illegal purpose or any evidence to prove the conspiracy set up by the prosecution. There was further no evidence that the appellant therein had control over the vehicle or that he was in possession of the drugs. Under such circumstances, Hon'ble the Apex Court in the said matter allowed the appeal and set aside the conviction of the accused appellant and acquitted the appellant of all the charges framed against him.

14. In the facts of the present case also, the only ground shown towards involvement of the petitioner is that he was the registered owner of the vehicle bearing registration No. MZ 01G 3542. The said fact came to the notice of the prosecution upon seizure of the sale deed which was available inside the vehicle.

15. Taking into consideration all of these factors as stated above, including the period of detention undergone, save and except the materials relied upon by the prosecution that he was the owner of the vehicle bearing registration No. MZ 01G 3542, from where the contraband narcotics was recovered and therefore, was directly or indirectly involved in that transaction is, *prima facie* not based on any cogent materials, as has been seen by this Court at this stage. This Court is also conscious of the stringent conditions provided under Section 37 of the NDPS Act, 1985 and the requirement of satisfaction of the twin conditions prescribed therein. Analyzing the materials available before this Court, this Court is of the considered view that there are no materials at this stage, to suggest that the petitioner is guilty of the offences alleged. That apart, the petitioner was in custody since his date of arrest, i.e., 02.05.2023, and no materials are placed before the Court to show that he is likely to commit any offences in future while on bail. In this context, reference may be made to the judgment of Hon'ble the Apex Court rendered in the case of Mohd. Muslim @ Hussain vs. State (NCT of Delhi) reported in 2023 SCC OnLine SC 352.

16. In this case while examining the stringent condition for grant of bail in NDPS

matters, the Apex Court held that the stringent condition for grant of bail may be necessary in public interest yet if trials are not concluded in time, the injustice wreaked on the individual is immeasurable. The Apex Court held that the reasonable grounds for believing that the accused is not guilty of such offence, as per the prescription of Section 37 of the NDPS Act, is only a prima facie determination. The relevant paragraphs of the judgment are extracted herein below:

“The conditions which courts have to be cognizant of are that there are reasonable grounds for believing that the accused is “not guilty of such offence” and that he is not likely to commit any offence while on bail. What is meant by “not guilty” when all the evidence is not before the court? It can only be a prima facie determination. That places the court’s discretion within a very narrow margin. Given the mandate of the general law on bails ([Sections 436, 437 and 439, CrPC](#)) which classify offences based on their gravity, and instruct that certain serious crimes have to be dealt with differently while considering bail applications, the additional condition that the court should be satisfied that the accused (who is in law presumed to be innocent) is not guilty, has to be interpreted reasonably. Further the classification of offences under [Special Acts \(NDPS Act, etc.\)](#), which apply over and above the ordinary bail conditions required to be assessed by courts, require that the court records its satisfaction that the accused might not be guilty of the offence and that upon release, they are not likely to commit any offence. These two conditions have the effect of overshadowing other conditions. In cases where bail is sought, the court assesses the material on record such as the nature of the offence, likelihood of the accused co-operating with the investigation, not fleeing from justice: even in serious offences like murder, kidnapping, rape, etc. On the other hand, the court in these cases under such special Acts, have to address itself principally on two facts: likely guilt of the accused and the likelihood of them not committing any offence upon release. This court has generally upheld such conditions on the ground that liberty of such citizens have to - in cases when accused of offences enacted under special laws – be balanced against the public interest.

19. A plain and literal interpretation of the conditions under [Section 37](#) (i.e., that Court should be satisfied that the accused is not guilty and would not commit any offence) would effectively exclude grant of bail altogether, resulting in punitive detention and unsanctioned preventive detention as well. Therefore, the only manner in which such special conditions as enacted under [Section 37](#) can be considered within constitutional parameters is where the court is reasonably satisfied on a prima facie look at the material on record (whenever the bail application is made) that the accused is not guilty. Any other interpretation, would result in complete denial of the bail to a person accused of offences such as those enacted under [Section 37](#) of the NDPS Act.

20. The standard to be considered therefore, is one, where the court would look at the

material in a broad manner, and reasonably see whether the accused's guilt may be proved. The judgments of this court have, therefore, emphasized that the satisfaction which courts are expected to record, i.e., that the accused may not be guilty, is only prima facie, based on a reasonable reading, which does not call for meticulous examination of the materials collected during investigation (as held in [Union of India v. Rattan Malik](#)¹⁹). Grant of bail on ground of undue delay in trial, cannot be said to be fettered by [Section 37](#) of the Act, given the imperative of [Section 436A](#) which is applicable to offences under the [NDPS Act](#) too (ref. [Satender Kumar Antil](#) supra). Having [19 \(2009\) 2 SCC 624](#) regard to these factors the court is of the opinion that in the facts of this case, the appellant deserves to be enlarged on bail."

The Apex Court further held that the jails are overcrowded and their living conditions are not appalling. The Apex Court held that danger of unjust imprisonment is that inmates are at risk of "prisonisation" a term described by the Kerala High Court in a *Convict Prisoner in the Central Prison vs. State of Kerala* reported in 1993 Cri LJ 3242.

17. Under such circumstances, taking into consideration the facts of the case and the materials placed before the Court, this Court is of the opinion that considering all of the above, the petitioner can be enlarged on bail, subject to the following conditions-

- i) the petitioner shall be enlarged on bail upon furnishing a bail bond of Rs. 1,00,000/- (Rupees One Lac Only) with two local sureties of the like amount to the satisfaction of the learned Special Judge, Karimganj, Assam, in connection with the aforementioned case;
- ii) the petitioner shall not hamper or tamper any jurisdiction or intimidate or attempt to influence any person or witness who may be connected with the trial of the case.
- iii) the petitioner will not change his residence without written permission of the learned trial Court.
- iii) the petitioner shall not move out of the of the territory of the learned trial Court without written permission.
- iv) the petitioner shall appear before the learned trial Court on each and every date without fail.

If any of the conditions are found to be violated, the bail granted is liable to be cancelled.

18. The bail application accordingly, stands allowed.

JUDGE

Comparing Assistant