

GAHC010256952023



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

Case No. : Bail Appln./4159/2023

MOHAMMAD ALAUDDIN
SON OF LATE SHEKH TEGAR ALI, RESIDENT OF VILLAGE- LAHAWA
BICHA TOLA, P.O. AND P.S. MOTIHARI, DIST. EAST CHAMPARAN, BIHAR,
PIN- 845401, PRESENTLY RESIDING AT K.S. PATH KHARDAH, NORTH 24
PARGANAS WEST BENGAL, PIN- 700117

VERSUS

THE UNION OF INDIA
REPRESENTED BY SC, NCB

Advocate for the Petitioner : MR. A PAUL

Advocate for the Respondent : SC, NCB

**BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI**

ORDER

29.02.2024

Heard Mr. A Paul, learned counsel for the petitioner. Also heard Mr. BB Gogoi, learned Additional Public Prosecutor, Assam for the respondent State.

2. This is an application under Section 439 Cr.P.C. praying for bail to the petitioner,

namely, Mohammad Alauddin, who was arrested on 30.03.2021 in connection with Special NDPS Case No.24/2021 corresponding to NCB Crime No.07/21 under Sections 8(C) read with Sections 20(b)(ii)(C)/25/28/29/35 and 54 of the NDPS Act, 1985.

3. It is submitted by the learned counsel for the petitioner that no contraband was recovered from the possession of the petitioner. The petitioner was arrested on the basis of the statement of the co-accused and CDR analysis. The commercial quantity of ganja was recovered from two persons who were in the alleged vehicle i.e. one Ramu Kushwaha and another person being Prem Pal Singh. It is also submitted that as no contrabands were recovered from the possession of the accused petitioner, he cannot be convicted on the basis of a statement of a co-accused as held by the Hon'ble Supreme Court in the case of *Tofan Singh Vs. State of Tamil Nadu* reported in (2012) 4 SCC 1.

4. It is further submitted that in the case of *Tofan Singh* (supra) it was observed by the Hon'ble Supreme Court that it is simply a statement which is not admissible before the court and on such statement the Court cannot convict a person. Learned counsel for the petitioner further submits that considering the said judgment, this Court also observed that the statement of co-accused recorded under Section 67 of the NDPS Act is unreliable for the purpose of conviction in *Ratna Ram and Another vs State of Assam* reported in, 2022 (4) GLT 424.

5. In support of his submissions, the learned counsel for the petitioner refers to Bail Application 3047/2023 (Raju Das and Another Vs. NCB)

6. On the other hand, the learned standing counsel NCB submits that voluntary statement of accused Ramu Kushwaha and Prem Pal Singh as well as the present petitioner spoken of direct involvement of the present petitioner in the trafficking of ganja in the instant case. According to the learned standing counsel NCB the seized ganja was concealed in the specially made space in the cabin of the truck HR 55 N 2597 by the present petitioner and one Lakhan in presence of Ramu and Prem Pal Singh. When on 30.03.2021, Prem Pal Singh and Ramu and the present petitioner

were brought face to face, wherein all of them identified each other.

7. The learned standing counsel NCB has further submitted that as commercial quantity of ganja was recovered in the alleged truck and the petitioner had taken active part in trafficking of the said contraband, hence, bail may not be granted to the petitioner at this stage.

8. In support of his submission, the learned standing counsel, NCB relies upon the following decisions:

- (i) Union of India through Narcotics Control Bureau, Lucknow Vs. Nawaz Khan (2021) 10 SCC 100.

9. I have considered the submissions of the learned counsel for the parties and also perused the scanned copies of the LCR.

10. It appears that commercial quantity of ganja was seized in the instant case, but the search and seizure list shows that the alleged ganja was recovered from the vehicle, in question, in which the co-accused Ramu Kushwaha and Prem Pal Singh were travelling. It also appears that only two witnesses were examined in the case, out of 11 witnesses and there is no indication in the statement of the witnesses that any contraband was recovered from the possession of the present petitioner.

11. As per offence report as well as the seizure list the commercial quantity of ganja was recovered from the possession of co-accused *Ramu Kuchwaha and Prempal Singh* who were travelling on the container truck bearing No. HR 55 N 2597. Admittedly, no any contraband was recovered from the possession of the present petitioner in connection with this case. The petitioner was arrested on the basis of the statement made by the accused Ramu and Prem Pal. As per decision of the case of *Bharat Choudhury* (supra) Hon'ble Supreme Court has held as follows:

“In the absence of any psychotropic substance found from the conscious

possession of A4, we are of the opinion that mere reliance on the statement made by A1 to A3 under Section 67 of the NDPS Act is too tenuous a ground to sustain the impugned order dated 15th July, 2021. This is all the more so when such a reliance runs contrary to the ruling in *Tofan Singh* (supra). The impugned order qua A-4 is accordingly quashed and set aside"

12. It also appears from the record that out of 11 witnesses only 2 witnesses have been examined. The last witness i.e PW-2 was examined on 7.08.2023. For last six months prosecution has failed to examine any witness. The accused petitioner has been detained in custody since 30.03.2021 i.e. more than two years and the conclusion of the trial will take some more time.

13. In view of the legal proposition of law as laid down by the Hon'ble Supreme Court in the case of *Bharat Choudhury* (supra), this Court is of the opinion that the petitioner deserves to be released on bail.

14. Accordingly, the petitioner, named above, shall be released on bail, on furnishing bail bond of Rs.1,00,000/- with two suitable sureties of the like amount out of which one of the sureties should be of Government employee, to the satisfaction of learned Additional Sessions (Special) Judge, Rangia, Kamrup.

15. The direction for bail is further subject to the conditions that the petitioner:

(a) shall not leave the territorial jurisdiction of learned Additional Sessions (Special) Judge, Rangia, Kamrup without prior written permission from him/her;

(b) shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer.

16. In terms of the above, this bail application stands disposed of.

JUDGE

Comparing Assistant