

GAHC010018582023



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

Case No. : AB/268/2023

MAJEDUR RAHMAN KHANDAKAR
S/O- HABIBUR RAHMAN KHANDAKAR, R/O- WARD NO. 16, BOC MORE,
P.S- DHUBRI, DIST- DHUBRI, ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR H R A CHOUDHURY

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE AJIT BORTHAKUR

ORDER

14.03.2023

Heard Mr. HRA Choudhury, learned Sr. Counsel appearing for the petitioner.
Also heard Mr. RJ Baruah, learned Addl. Public Prosecutor, Assam appearing for the State respondent.

This petition under Section 438 Cr.P.C., is filed for granting the privilege of

pre-arrest bail to the petitioner, namely **Majedur Rahman Khandakar** apprehending arrest in connection with **Special Case No. 433/2022** arising out of **Golakganj P.S. Case No. 1344/2019** under Section **224** of the IPC read with Section **22(c)/29** of the NDPS Act pending in the Court of learned Special Judge (Additional), Dhubri.

The scanned copy of the case record along with the case diary, as called for, is placed before the Court.

Mr. HRA Choudhury, learned Sr. Counsel appearing for the petitioner, submits that the petitioner has been falsely implicated in the alleged offence. Narrating the actual facts of the case Mr. Choudhury submits that the petitioner purchased one Mahindra Supro Mini Truck bearing registration No. AS-17C-2360 on 02.04.2019 through finance and after few months of purchase, he sold the vehicle to one Mozammel Sheikh for a consideration of Rs.90,000/- vide deed of agreement, dated 28.08.2019, due to his financial crisis and in terms of the aforesaid agreement the purchaser took over possession of the vehicle through official formalities with regard to transfer of the vehicle. The purchaser, however, in anticipation of getting transfer of registration certificate was running the vehicle from 28.08.2019 till the date of occurrence. Mr. Choudhury therefore, submits that on the date of the alleged occurrence, the vehicle was neither under possession of the petitioner nor the petitioner had any control over the vehicle since 28.08.2019. As such, Mr. Choudhury, learned Sr. Counsel, submits that although the recovered contraband is much beyond the commercial quantity, but there is no complicity of the petitioner in the commission of the alleged offence and he is roped into the case as he is still the registered owner of the seized vehicle on official record. However, unfortunately, the petitioner is named as one of the accused in the charge-sheet showing him as absconder.

Mr. RJ Baruah, learned Addl. Public Prosecutor, submits that the case record and the case diary do not reveal any incriminating prima facie evidence against the present petitioner.

A perusal of the case record shows that the charge-sheet under Section 224 of the IPC read with Section 22(c) of the NDPS Act was submitted on 14.12.2022 against 9(nine) accused person including the present petitioner showing him as an absconder and accordingly, on being transferred for trial, the learned Special Judge(Addl.), Dhubri by order, dated 16.12.2022 issued summons to all the accused persons for appearance.

The case diary reveals that the investigating officer made repeated efforts to apprehend the petitioner in vain by raiding his dwelling house on a number of occasions. The case diary further reveals prima facie material to show complicity of the present petitioner to the commission of the alleged offences. However, in disposing the instant petition under Section 438 Cr.P.C. after filing of charge-sheet, this Court is refrained from passing any observation on the merit of the case.

Having considered the averments made in the petition and hearing the learned counsel of both sides, this Court is of the opinion that the petitioner is under an obligation to respond to the summons (not warrant of arrest) issued by the learned Court below and accordingly, appear before the said Court and as such, there is no reasonable apprehension of being arrested in connection with the aforesaid case.

It is, however, provided that as the petitioner is apprehending arrest, in order to enable him to appear before the court of **learned Special Judge (Additional), Dhubri**, he is granted the privilege of interim pre-arrest bail of

Rs.1,00,000/-(Rupees One Lakh) with one surety of like amount to the satisfaction of the arresting authority in the event of his arrest for a period of **15(fifteen) days** from the date of this order or till his appearance within the aforesaid specified period, whichever is earlier, subject to the condition that if he fails to appear within the aforesaid period, **on and from the 16th day**, this interim pre-arrest bail shall not have any force.

The petitioner is, however, given liberty to file regular bail application before the learned trial Court, and if such bail application is filed, the same shall be considered and disposed of in accordance with law.

This disposes of the anticipatory bail application.

JUDGE

Comparing Assistant