

GAHC010084892023



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

Case No. : AB/1445/2023

ANOWAR HUSSAIN
S/O LT. SAMSUDDIN,
VILL.- SAPKATA,
P.S.- MUKALMUA,
DIST.- NALBARI, ASSAM.

VERSUS

THE STATE OF ASSAM
REP. BY P.P.

Advocate for the Petitioner : MR S PAUL

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

Date : 24.07.2023

Heard Mr. B. K.Mahajan, learned counsel for the petitioners. Also heard Mr.R. J. Baruah, learned Additional Public Prosecutor for the State.

This is an application under Section 438 of the Code of Criminal Procedure, 1973 filed by the petitioner, namely, Anowar Hussain, praying for

pre-arrest bail apprehending his arrest in connection with Mukalmua P. S. Case No. 231/2023 registered under Sections 21(b)/29 of the NDPS Act, 1985.

The accusation in this case is that on 03.4.2023, one Tarni Das, SI of Police of Mukalmua Police Station lodged an FIR before the Officer-in-charge of Mukalmua Police Station, *inter-alia*, alleging that on receipt of an information through reliable sources that two drug peddlers are carrying some narcotics substance at Bodoni Akhia area and a search operation was conducted near Bodoni Akhia village and during the search operation one accused person namely, Mantaz Ali was apprehended and on search of his body suspected heroine weighing about 12.99 grams of suspected heroine was recovered from his possession. It is also alleged that the said accused had stated during interrogation that he procured the said drugs from the present petitioner.

On receipt of the said FIR, Mukalmua P. S. Case No. 231/2023 was registered.

Learned counsel for the petitioner has submitted that the main accused from whose possession, the suspected heroine was recovered is a drug addict and he has falsely implicated to the present petitioner who has a small shoe shop in Sapkata Village and has a good reputation in society.

On a pointed query by this Court as to whether the anticipatory bail application is maintainable in case of offence under NDPS Act or not. Learned counsel for the petitioner has submitted that this issue has been laid to rest by a Division Bench of this Court in "**Baljeet Singh Vs. State of Assam**" reported in "**2003 SCC online GAU 85**", wherein this Court observed that an application under Section 438 CrPC for pre-arrest bail is maintainable for an offence committed under the NDPS Act, 1985.

Learned Additional Public Prosecutor also submits that though an

application under section 438 is maintainable for an offence under NDPS Act 1985, however, he opposed the grant of anticipatory bail to the present petitioner on the ground that there are incriminating materials against the present petitioner in the case diary and has placed case diary which was requisitioned in connection with this case before this Court.

I have considered the submissions made by the learned counsel for both sides and perused the case diary which has been placed before me.

On perusal of the case diary, it appears that except the statement of the co-accused Mantaz Ali implicating the present petitioner in the offence alleged in the FIR, there is nothing else in the case diary which implicates the present petitioner.

It also appears that the suspected heroine weighing about the 12.99 grams was recovered only from the co-accused Mantaz Ali and nothing has been found from the present petitioner.

There is nothing in the case diary which suggests that there are other cases pending against the present petitioner or that he is having any criminal antecedent.

Considering the quantity of contraband seized in this case as well as considering the materials available in the case diary, this Court had considered opinion that if the present petitioner co-operates with the Investigating Officer of the Mukalmua P. S. Case No. 231/2023, his custodial detention does not appear to be necessary for fair completion of the investigation of the said case.

In view of the above, the petitioner, namely, Anowar Hussain, is directed to appear before the Investigating Officer of Mukalmua P. S. Case No. 231/2023 within a period of ten days from the date of this order.

If he does so within the stipulated period of time, in the event of their arrest in connection with Mukalmua P. S. Case No. 231/2023 petitioner, namely, Anowar Hussain, shall be allowed to go on bail on furnishing of bail bond of Rs. 30,000/- (Rupees Thirty Thousand only) with one surety of like amount to the satisfaction of the arresting authority with the condition that :

1. That the petitioner shall continue to appear before the Investigating Officer of Mukalmua P. S. Case No. 231/2023 as and when required by the Investigating Officer for the sake of fair completion of the investigation of the said case.
2. That the petitioner 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 or her from disclosing such facts to the Investigating Officer of this case.
3. That the petitioner shall not indulge in any offence similar to that with which he has been charged in the instant case.

With the above, observations, this anticipatory bail application is disposed of.

JUDGE

Comparing Assistant