

GAHC010095282023



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

Case No. : AB/1599/2023

SANTOSH KR MAHATO
S/O UMED LAL MAHATO
R/O VILL- HOUSE NO. 9,
BIBHASH NAGAR,
VIDYA MANDIR PATH, BHETAPARA
P.S. BASISTHA
DIST.KAMRUP (M), ASSAM
PIN-781040

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. N BORAH

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE AJIT BORTHAKUR

ORDER

08.06.2023

Heard Mr. N. Borah, learned counsel for the petitioner. Also heard Mr. B. Sarma, learned Addl. Public Prosecutor 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, **Santosh Kr. Mahato**, apprehending arrest in connection with **Bazaricherra P.S. Case No.20/2023** registered u/s **22(c)/25/29** of the NDPS Act.

The Case diary, as called for, is placed before the Court.

The case relates to recovery and seizure of 1280 numbers bottles of ESKUF Cough Syrup of 100 ml. each containing Codeine Phosphate while being carried in a container truck bearing registration No.AS 01MC 0376 driven by one Mukesh Yadav.

Mr. N. Borah, learned counsel for the petitioner, submits that out of the three container trucks belonging to the petitioner the seized container truck has been given on service contract with Gati Kintetsu Express Pvt. Ltd. (GATI KWE) on the basis of an agreement duly notarized and executed vide Annexure-C. Mr. Borah vehemently submits that the petitioner was no way involved in the alleged offence as projected in the FIR inasmuch as he was not responsible for the goods packed inside the sealed cartons as per the aforesaid agreement, dated 28.11.2022 and as such, GATI KWE was solely responsible for the alleged illegal narcotic drugs being transported in his vehicle on service contract. The tracking reports of the said transport company show that the seized consignment was booked for emergency/life saving drug from Ahmedabad to Agartala and another consignment for industrial machine parts from Ahmedabad to Agartala. Therefore, Mr. Bora submits, proper verification of the dockets in question will reveal the entire episode behind the transportation of the seized contraband. It has been submitted that the petitioner being a permanent resident of Bhetapara under Basistha P.S., Guwahati there is no chance of him jumping the course of investigation, if the privilege of pre-arrest bail is granted

to him.

Opposing the bail application, Mr. R.J. Baruah, learned Addl. Public Prosecutor, submits that the case diary reveals sufficient incriminating material against the petitioner who is the owner of the seized vehicle. Mr. Baruah further submits that as the investigation is yet to be completed, the prayer for pre-arrest bail of the petitioner may not be considered favourably.

A perusal of the seizure memo prima facie shows that 1280 numbers of bottles of ESKUF Cough Syrup of 100 ml. each containing suspected Codeine Phosphate in 8 cartons were recovered and seized from a carrier truck bearing registration No.AS 01MC 0376 as stated in the FIR. It is further revealed that the investigating agency has been investigating into the lease agreement of the vehicle belonged to the petitioner with effect from 10.01.2023 to 10.01.2026 with GATI KWE, a carrier company. The consignors were found to be Household Cluster, Changodar, Pharmatec, Changodar- 382213 GJ and Pharmatec, AMDW, FI289-382213GJ. The receiver's address was Vest Medico, Agartala, 799004 which is found nonexistent. There are materials to show that the petitioner, the owner of the vehicle, has not appeared before the Investigating Officer despite notices being issued twice to him. Ex-facie there is indication on the case diary that the employees of GATI KWE and the present petitioner are involved in the illegal trade of drugs, subject, however, to final outcome in investigation.

The FSL report on the seized cough syrup bottles is yet to be received.

In the above backdrop of facts and circumstances that emerge from the case diary, this Court is of the opinion that if the privilege of pre-arrest bail is granted in favour of the petitioner in the instant case involving huge commercial quantity of drugs suspected to be Codeine Phosphate based cough syrup, the

investigation into the case is likely to be hindered. It may be noted here that the police have a statutory right to investigate, which is necessary to be protected for a fair and hindrance free investigation.

For the above stated reasons, the pre-arrest bail application of the petitioner stands **rejected**.

Return the case diary.

This disposes of the anticipatory bail application.

JUDGE

Comparing Assistant