

GAHC010098762023



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

**Case No. : AB/1669/2023**

MD. FARJUL HAQUE  
S/O. LT. SANDHU SEKH, R.O. NEAR MAJID HERAPATTY, HAIBURGAON,  
NAGAON, P.S. AND P.O. NAGAON, DIST. NAGAON, ASSAM

VERSUS

THE STATE OF ASSAM  
REPRESENTED BY PP, ASSAM.

**Advocate for the Petitioner : MR. N N B CHOUDHURY**

**Advocate for the Respondent : PP, ASSAM**

**BEFORE**  
**HON'BLE MR. JUSTICE ROBIN PHUKAN**

**ORDER**

**03.10.2023.**

Heard Mr. N.N.B. Chaudhury, learned counsel for the applicant and also heard Mr. P.S. Lahkar, learned Addl. Public Prosecutor for the State respondent.

**2.** Apprehending arrest in connection with **Bihpuria P.S. Case No. 222/2022, under sections 21(b)/29 of NDPS Act**, this application, under Section 438 of Cr.P.C., is preferred by applicant, namely, **Farjul Haque** for grant of pre-arrest bail.

**3.** It is to be noted here that the above noted case has been registered on the basis of one FIR lodged by S.I. Nipon Gogoi of Bandardewa Police Out Post on 26.11.2022.

**4.** The essence of allegation made in the said FIR, dated 26.11.2022, is that acting on a tip off the informant and his staffs proceeded to Bandardewa Bazar area, near No.2 Depot, on the NH 15, and apprehended two women of Nagaon and on being searched/frisked them, he recovered total 122.61 grams of suspected Heroin in 10 numbers of soap box.

**5.** Mr. N.N.B. Chaudhury, the learned counsel for the applicant submits that the applicant is innocent and no way involved in the offence alleged in the FIR. Mr. Chaudhury further submits that the applicant has not been named in the FIR and he was implicated only by co-accused and that the quantity of contraband substance recovered from the possession of co-accused is only 122.61 grams, which is not of commercial quantity and that investigation of the case has already been completed and charge sheet has been submitted against the accused persons, including the present applicant and his custodial interrogation is not required and he is ready to face trial and therefore, Mr. Chaudhury has contended to allow this petition.

**6.** Per contra, Mr. P.S. Lahkar, the learned Addl. P.P. has vehemently opposed the petition. Mr. Lahkar further submits that the applicant is implicated by co-

accused, who happened to be the wife of the present applicant, and that he had not co-operated with the investigating agency and though the quantity of contraband substance is intermediate, yet there is materials against the applicant, and therefore, it is contended to dismiss the petition

**7.** Having heard the submission of learned Advocates for both the sides, I have carefully gone through the petition and the documents placed on record and also perused the scanned copy of the record and the Status Report received from the learned court below.

**8.** It is to be mentioned here that in the case of ***Siddharam Satlingappa Mhetre vs. State of Maharashtra and others***, reported in ***(2011) 1 SCC 694***, specially to para 112, Hon'ble Supreme Court had laid the parameters, required to be taken into consideration by the Court, while granting anticipatory bail. The parameters are as follows:-

“122. The following factors and parameters can be taken into consideration while dealing with the anticipatory bail:

- (i) The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;
- (ii) The antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a Court in respect of any cognizable offence;
- (iii) The possibility of the applicant to flee from justice;
- (iv) The possibility of the accused's likelihood to repeat similar or the other offences.

- (v) Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her.
- (vi) Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people.
- (vii) The courts must evaluate the entire available material against the accused very carefully. The court must also clearly comprehend the exact role of the accused in the case. The cases in which accused is implicated with the help of sections 34 and 149 of the Indian Penal Code, the court should consider with even greater care and caution because over implication in the cases is a matter of common knowledge and concern;
- (viii) While considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors namely, no prejudice should be caused to the free, fair and full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused;
- (ix) The court to consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;
- (x) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail."

**9.** In the case in hand, it appears from the scanned copy of the record of the learned court below and also from the Status Report submitted by the learned Special Judge, North Lakhimpur that after completion of investigation the I.O. had already submitted charge sheet against three accused, namely, 1. Amina Khatun, (2) Sajema Begum and 3. Farjul Hoque, to stand trial under sections 21(b)/29 of NDPS Act. It also appears that accused No. 1. Amina Khatun, (2) Sajema Begum are on bail and accused No. 3. - Farjul Hoque is shown as absconder in the charge sheet. It also appears that upon the charge sheet, the learned court below had taken cognizance and issued process to the accused and now the case is pending at the stage of appearance.

**10.** It also appears from the scanned copy of the record of the learned court below that the present applicant is the main conspirator of this case and he had delivered the seized contrabands to co-accused Amina Khatun, who happened to be his wife, to deliver the same to one Khargeswar Boro @ Boiler of Bandardewa. Further, it appears that the present applicant has been using his wife since long time for illegal trafficking of Drugs.

**11.** Having considered aforementioned facts and circumstances, and also the nature and gravity of the offence, and the punishment prescribed for the same, and further considering the role played by the applicant of this case, as well as the submission of learned Advocates for both the sides, and also in view of the observation, so made in the case of ***Siddharam Satlingappa Mhetre*** (supra) as discussed herein above, and striking a balance between the individual right of the applicant and that of the societal interest, this Court is of the view that this is not a fit case where the privilege of pre arrest bail can be extended to the applicant. It is a fact that investigation has already been completed. But, in the

given background, repetition of similar offence and also misusing of liberty of pre-arrest bail cannot be ruled out.

**12.** And accordingly, this petition stands dismissed. The applicant shall surrender before the learned court below forthwith and in the event of his surrender and filing a petition for bail the learned court below shall consider the same in accordance with law, without being influenced by any of the observation made herein above.

**JUDGE**

**Comparing Assistant**