

GAHC010127172023



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

Case No. : AB/2128/2023

1. AFAJ UDDIN AND 3 ORS
S/O YUNUS ALI
R/O VTC PART- VI, P.O. BEHARA BAZAR, P.S. KATIGORAH, DIST. CACHAR,
ASSAM, PIN-788817.

2: RAMIJ UDDIN @ KUTI
S/O ABDUL AZIZ
R/O VTC PART- VI
P.O. BEHARA BAZAR
P.S. KATIGORAH
DIST. CACHAR
ASSAM
PIN-788817.

3: FAKHAR UDDIN
S/O ABAR ALI
R/O VTC PART- VI
P.O. BEHARA BAZAR
P.S. KATIGORAH
DIST. CACHAR
ASSAM
PIN-788817.

4: BABOR HUSSAIN
S/O ABDUL MATLIB
R/O VTC PART- VI
P.O. BEHARA BAZAR
P.S. KATIGORAH
DIST. CACHAR
ASSAM
PIN-788817

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. L R MAZUMDER

Advocate for the Respondent : PP, ASSAM

BEFORE
HON'BLE MR. JUSTICE ROBIN PHUKAN
ORDER

03.08.2023.

Heard Mr. L.R. Mazumder, learned counsel for the applicants. Also heard Mr. K.K. Das, learned Addl. P.P., Assam for the State respondent.

Apprehending arrest in connection with the Katigorah P.S. Case No. 718/2019, under Sections 20(C)/29 of the NDPS Act, this application under Section 438 of the Code of Criminal Procedure, is preferred by four applicants, namely, Afaj Uddin, Ramij Uddin @ Kutu, Fakhar Uddin and Babor Hussain, for grant of pre-arrest bail.

It is to be noted here that the aforementioned Katigorah P.S. Case No. 718/2019, under Sections 20(C)/29 of the NDPS Act, has been registered on the basis of an F.I.R., lodged by Inspector Nayanmani Singha, officer-in-charge of Katigorah P.S. on 31.10.2019. The essence of the allegation made in the FIR is that on 30.10.2019, at about 11:00 p.m., acting on a tip off, the informant, along with other police officers had conducted search in the house of Afaj Uddin, son of Younis Ali of Societypar, Tintikri (Bihar Part-VI) and recovered 55 packets, weighing 550 kilogram, of suspected Ganja and seized the same in presence of the witnesses, by preparing seizure list and as Afaj Uddin was found not available in the house, and his wife when asked, disclosed that the

suspected Ganja packets were kept by Afaj Uddin and his associates, namely, Kutu, Fakar, Babul and some others.

Mr. L.R. Mazumder, learned counsel for the applicants submits that nothing has been recovered from the possession of applicants, namely, Ramij Uddin @ Kutu, Fakhar Uddin and Babar Hussain and that the statement of the wife of applicant Afaj Uddin is not admissible and that the applicants are ready to face the trial and therefore, it is contended to allow the petition.

On the other hand, Mr. K.K. Das, learned Addl. P.P., Assam has vehemently opposed the petition and submits that the quantity of Ganja, recovered from the house of applicant Afaj Uddin is of commercial quantity and as such, the applicants have to satisfy the two requirements of Section 37 of the NDPS Act and that the applicants have failed to satisfy those requirements and therefore, Mr. Das contended to dismiss the petition.

Having heard the submissions of learned Advocates of both 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 Case Diary, received from the learned Court below and I find sufficient force in the submission of Mr. K.K. Das, learned Addl. P.P., Assam.

The seizure list, available on the record and the case diary, reveals that the quantity of Ganja recovered and seized from the house of applicant Afaj Uddin is of commercial quantity, weighing 550 kilogram. Further it appears from the statement of witness Safia Khatun, who happens to be the wife of applicant No.1 Afaj Uddin, reveals that 55 packets of suspected Ganja, were kept in the house of Afaj Uddin by Afaj Uddin, Fakhar, Kutu, Babar and some others.

As the quantity of the contraband substance, recovered from the house of

Afaj Uddin is of commercial quantity, the applicants have to satisfy the two requirements of Section 37 of the NDPS Act. But, from the materials placed on record and also from the submission of Mr. L.R. Mazumder, learned counsel for the applicants, this Court is unable to derive its satisfaction that the applicants are not guilty of the offence and that they will not commit any such offence while on bail.

Though Mr. Mazumder submits that nothing has been recovered from the possession of the applicants Ramij Uddin @ Kuti, Fakhar Uddin and Babor Hussain and the statement of witness Safia Khatun is not admissible, yet Mr. Mazumder fails to assign any cogent reason as to why Safia Khatun's statement is not admissible. It is to be noted here that she is not an accused here in this case and as such, there is no scope to disbelieve her statement at this stage, who categorically stated that the seized Ganja were kept in her house by the aforesaid applicants.

In view of the above, this Court is of the view that this is not a fit case where the privilege of pre-arrest bail under Section 438 of the CrPC, can be extended to the applicants.

Accordingly, the petition stands dismissed and the applicants are directed to appear before the learned Court below on 11.08.2023.

In terms of above, this anticipatory bail application stands disposed of.

JUDGE

Comparing Assistant