

GAHC010149002023



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

Case No. : AB/2368/2023

AJIMUDDIN
S/O- NUR HUSSAIN @ NURUL ISLAM @ NURUL HAQUE,
R/O- VILLAGE- CHAKCHAKA,
P.O.- HATIPOTA,
P.S.- CHAPAR,
DISTRICT- DHUBRI, ASSAM,
PIN- 783348.

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM.

Advocate for the Petitioner : MR. M H TALUKDAR

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI

ORDER

Date : 08.08.2023

Heard Md. S. Alom, learned counsel for the petitioner. Also heard
Mr. K.K. Das, learned Additional Public Prosecutor for the State.

This is an application filed under **Section 438 Cr.P.C.**, praying for pre-arrest bail by the petitioner, namely, **Ajimuddin**, in connection with **Special N.D.P.S. Case No. 28/2022(arising out of Chunari P.S. Case No. 06/2022 under Section 17(b) of NDPS Act.)** pending in the court of learned Special Judge, Goalpara.

The case of the petitioner is that on 12/02/2022, the informant along with some police personnel visited Chitalmari Char under Chunari Police Station and destroyed the opium cultivation by using tractor. During search in the house of one Jubbar Ali Sheikh, approximately 385 grams of liquid opium were recovered and accordingly the said liquid opium has been seized in presence of witnesses. Subsequently, an F.I.R. was lodged and registered as chunari P.S. case number 28/2022 under section 17(b)NDPS Act.

It is submitted by learned counsel for the petitioner that the petitioner is no way connected with the alleged offence. The place of occurrence i.e the Chitalmari Char is more than 40km away from his house. The petitioner is neither involved in cultivating the alleged opium nor he ever helped other accused person to cultivate the same. On the other hand, the land in which the alleged opium is cultivated does not belong to the petitioner.

It is also the submission of learned counsel for the petitioner that during investigation, police never visited his residence to arrest him but the investigating officer has submitted charge sheet in this case under section 17(b) of N.D.P.S Act against the petitioner showing him as absconder. Though he received summons from the learned Special Court Goalpara, but he filed an application seeking pre arrest bail before the

said court which was rejected taking a view that mere apprehension of arrest without any warrant does not entitle the petitioner to pray for allowing him the privilege of anticipatory bail and issued N.B.W.A against the petitioner. It is further submitted that under such backdrop, the privilege of pre-arrest bail is extended to the petitioner.

In support of his submission, learned counsel cited one case law- (2021) A.I.R (SC) 4154 (Aman Preet Singh VS C.B.I through Director).

In the said case, it was held that accused having not being arrested during investigation or not being produced in custody is itself sufficient to entitle him to be released on bail.

In response, Mr. K.K. Das, learned Additional Public Prosecutor has opposed in granting bail to the petitioner by stating that the petitioner was shown as absconder in the charge sheet as such, he may not be available during trial also.

I have considered the submissions of learned counsel for the parties. I have also perused the scanned copy of the record. On perusal of the record, it appears that the alleged opium was recovered from the house one Jubbar Ali Shiek. It transpires that no any contraband was found from the possession of the present petitioner. It is a settled position of law that the police has no authority to declare a person as absconder. The court has such power to declare one person absconder after proper execution of warrant of arrest and proclamation of attachment. In the charge sheet, it is not reflected that how the petitioner was involved in the case and why he was shown as absconder in charge sheet.

In view of the above and considering the submissions of learned

counsel for the parties, this court is of the view that custodial interrogation of the petitioner is not required in the present case.

Accordingly, the learned Special Judge, Goalpara shall allow the petitioner to go on bail on furnishing bail bond of Rs.50,000/- with a suitable surety of the like amount. The learned trial court is at liberty to impose any condition(s) as it deems fit and proper at the time of releasing the petitioner/accused on bail to procure his attendance during trial.

The observation made above, shall confine for the purpose of disposal of this petition only and shall not in any way affect the proceeding of the learned trial court.

In view of above, the anticipatory bail application stands disposed of accordingly.

JUDGE

Comparing Assistant