GAHC010163972023

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

Case No. : AB/2588/2023

BABUL BASUMATARY
S/O- SRI SIREN BASUMATRY, R/O- HAHCHARA, BAKSA,P.O.RUPAHI, P.S. SALBARI, DIST. BAKSA (BTAD), ASSAM, PIN- 781318.

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

Advocate for the Petitioner : MR. B NATH

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

Date : 28.07.2023

Heard Mr. B. Nath, learned counsel for the petitioner. Also heard Mr. K. K. Das, learned Additional Public Prosecutor for the State.

This application under section 438 of the Code of Criminal Procedure, 1973 has been filed by the petitioner, namely, Babul Basumatary praying for pre-arrest bail apprehending his arrest in connection with Special NDPS Case

No. 30/2022 under Sections 21(b)/27(a) of the NDPS Act, 1985 pending before the learned Court of Sessions Judge, Baksa, Assam, wherein Non-Bailable Warrant of Arrest was issued against the present petitioner.

The case of the petitioner is that one P. Swadhinata Borah, S.I. of Police lodged an FIR before Officer-in-Charge of Salbari Police Station *inter-alia*, alleging that 19.70 gram of heroine was recovered from the possession of the one Tanudhar Basumatary who has been named in the said FIR.

Later on, investigation was initiated and the charge-sheet was laid in the said case against the nine numbers of accused persons showing the present petitioner as absconder in Column No. 2 of the Charge-sheet along with four other accused persons.

Learned counsel has submitted that the Court of learned Sessions Judge, Baksa, on receipt of the charge-sheet on the very date when the charge-sheet was placed before the learned Sessions Court and when the cognizance was taken had issued summons to four of the co-accused persons including Tanudhar Basumatary from whose possession contraband was recovered, however non-bailable warrant of arrest was issued against the present petitioner only because of the fact that his name has been shown as absconder in the charge-sheet which according to the learned counsel for the present petitioner is against the laid down proposition of law.

Learned counsel for the present petitioner submits that the learned Court ought to have issued summons to the present petitioner also as their name has been shown in the charge-sheet as absconder by police and not by the Court in pursuant to the provision of Section 82 of Code of Criminal Procedure, 1973.
Now, the petitioner is apprehending arrest as a pending warrant is there against him.

It appears from the order dated 14.02.2023, passed by learned Sessions Judge, Baksa that Tanudhar Basumatary from whose possession the contraband was recovered is on his bail.

On the other hand, learned Additional Public Prosecutor submits that as there are incriminating materials against the present petitioner and as the learned Trial Court has issued the non-bailable warrant of arrest, he opposes the grant of bail to the present petitioner.

I have considered the submissions made by the learned counsel for both sides and perused the materials on record.

It appears that on perusal of the order dated 14.02.2023 passed by learned Sessions Judge, Baksa which is annexed as Annexure-3 to the instant bail application that the main accused, namely, Tanudhar Basumatary from whose possession contraband was recovered is on bail.

It also appears that on the very first day the learned Trial Court had issued non-bailable warrant of arrest against the present petitioner, merely, because of the fact that his name has been shown as an absconder in Column No.2 of the charge-sheet, whereas, against four of the other co-accused summons were issued.

There is no dispute over the position of law that where the accused has not been declared as a proclaimed absconder under Section 82 of the Code of Criminal Procedure, 1973 by the Court and where only the name of accused is shown as absconder in the charge-sheet by Police, the learned Court taking cognizance of the offence under charge-sheet should issue summons at the first instance.

Considering this fact as well as considering the fact that the main accused from whose possession the contraband was recovered has already been granted

bail, the present petitioner is directed to appear before the learned Sessions Judge, Baksa within a period of 15 days from the date of this order in NDPS Case No. 30/2022 corresponding to Salbari P. S. Case No. 51/2023 and if he does so, within the said period of time, he shall be allowed to go on bail on such considerations and conditions, which may be imposed and deem fit by the learned Trial Court.

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

JUDGE

Comparing Assistant