

GAHC010181962023



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

Case No. : AB/2887/2023

MD FARJUL HAQUE
S/O- LATE SANDU SEIKH,
R/O- NEAR MASJID HERAPATTY , HAIBORGAON, P.S AND P.O- NAGAON,
DIST- NAGAON, ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY PP, ASSAM

Advocate for the Petitioner : MR. N N B CHOUDHURY

Advocate for the Respondent : PP, ASSAM

BEFORE
HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

ORDER

05-10-2023

Heard Mr. N.N.B. Choudhury, learned counsel for the petitioner and Mr. K. Baishya, learned Additional Public Prosecutor, Assam for the State.

2) By this application under Section 438 CrPC, the petitioner, namely, **Md. Farjul Haque**, Son of late Sandu Seikh; resident of Herapatty under Haiborgaon Police Station of district-Nagaon have prayed for his pre-arrest bail in Special (NDPS) Case No.21/2023 registered under Sections 21(b)/29 of the NDPS Act corresponding to G.

R. Case No. 1305/2022 arising out of Bihpuria Police Station Case No. 221/2022, wherein, Charge-Sheet has been filed on 28.04.2023 vide Charge-Sheet No. 62/2023.

3) The petitioner earlier approached this Court in AB No. 1698/2023 seeking pre-arrest bail in said Bihpuria Police Station Case No. 221/2022 corresponding to G. R. Case No. 1305/2022 registered under Sections 21(b)/29 of the NDPS Act. As in the meanwhile, charge-sheet was filed in said Bihpuria P. S. Case, the Court by order dated 27.06.2023; passed in said AB No. 1698/2023 directed the petitioner to approach the appropriate Court for his bail in said Bihpuria P.S. Case and accordingly disposed of said AB No. 1698/2023.

4) The petitioner stated that in the charge-sheet No.62/2023 filed by the Investigating Officer of the case in said Bihpuria P. S. Case No. 221/2022, the petitioner has been shown as absconder.

5) The police on receiving special information apprehended Khageswar Boro with suspected Heroin in a soap box wrapped with black polythene measuring about 12.71 grams (excluding the plastic container and polythene etc.) apprehended Ritul Bhuiyan with one soap box full suspected to be Heroin weighing about 12.93 grams, apprehended Anima Khatun from Herapatty, Nagaon who has been suspected to deliver those narcotic substances.

6) It is stated that those three arrested accused persons were released on bail in said Bihpuria P. S. Case No. 221/2022 by this High Court by order dated 03.01.2023 passed in Bail Appln. No. 3476/2022 and order dated 24.02.2023, passed in Bail Appln. No.176/2023.

7) Petitioner stated that said Anima Khatun was released on bail in said Bihpuria P. S. Case No. 221/2022 is his wife, who left him two years back and he does not know whereabouts of her and he has seven children out of which four are minors and that he is the only earning member of the family working as a private driver and no way connected with the case.

8) Petitioner stated that the aforesaid facts are new and were not placed earlier before the Court in said AB No.1698/2023 disposed of earlier on 27.06.2023. Hence the petitioner by this application prayed for his pre-arrest bail in said Bihpuria P. S. Case No. 221/2022.

9) From the charge sheet of the case as well as the case diary, it is seen that the arrested accused persons implicated the petitioner with regard to his involvement in the case as supplier of the contraband drugs.

10) It is also seen that the learned Special Judge (NDPS) issued summon to the petitioner on 23.05.2023 in said Special (NDPS) Case No.21/2023.

11) Mr. Choudhury, learned counsel for the petitioner in support of his argument placed reliance on the judgment of the Hon'ble Supreme Court in the case of *Tofan Singh Vs. State of Tamilnadu* reported in 2013 16 SCC 31 and *Dipakbhai Jagdishchandra Patel Vs. State of Gujarat and another* reported in 2019 16 SCC 547 as well as in the case of *Ratna Ram and another Vs. State of Assam* reported in 2022 (4) GLT 424, decided by this High Court.

12) After considering the entire aspect of the matter and hearing the parties, the petitioner, namely, **Md. Farjul Haque**, is directed to appear before the learned Special Judge (NDPS), Lakhimpur, North Lakhimpur in said Special (NDPS) Case No.21/2023 registered under Sections 21(b)/29 of the NDPS Act, corresponding to G. R. Case No. 1305/2022 arising out of Bihpuria Police Station Case No. 221/2022 **on or before 16.10.2023.**

13) In the event of his such presence before the learned Special Judge (NDPS), Lakhimpur, North Lakhimpur in said Special (NDPS) Case No.21/2023, as directed above, the said Court shall allow the petitioner **Md. Farjul Haque** to go on bail on furnishing a bail bond of Rs. 1,50,000/- with two local sureties of the like amount each to the satisfaction of the said learned Special Judge subject to the conditions that the petitioner **(i)** shall not leave the territorial jurisdiction of the learned Special Judge

(NDPS), Lakhimpur, North Lakhimpur, without obtaining prior written permission from the said authority; **(ii)** shall appear and co-operate in the trial of the said Special (NDPS) Case No.21/2023, during the trial of the said case and **(iii)** shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him/her from disclosing such facts to the Court or to any police officer.

14) Any violation of the aforesaid terms and conditions by the petitioner, named above, the pre-arrest bail granted to him in said Special (NDPS) Case No.21/2023 registered under Sections 21(b)/29 of the NDPS Act, corresponding to G. R. Case No. 1305/2022 arising out of Bihpuria Police Station Case No. 221/2022 shall stand automatically vacated.

15) With the above observation and direction, this pre-arrest bail application stands allowed to the extent above.

JUDGE

Comparing Assistant