

GAHC010227792023



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

Case No. : AB/3455/2023

BIPUL CHANDRA RAY
S/O BIMAL CHANDRA RAY,
R/O SEUTI PART- II,
P.O.- SUKARURKUTHI,
P.S.- SAHEBGANJ, DIST.- COOCH BEHAR, STATE- WEST BENGAL.

VERSUS

THE NARCOTICS CONTROL BUREAU
REP. HEREIN BY ITS STANDING COUNSEL, NARCOTICS CONTROL
BUREAU, GUWAHATI ZONAL UNIT, GUWAHATI, ASSAM.

Advocate for the Petitioner : MR. H NATH

Advocate for the Respondent : SC, NCB

BEFORE
HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

ORDER

Date : 17-11-2023

- 1.** Heard Mr. D. Gogoi, learned counsel for the petitioner Bipul Chandra Ray.
- 2.** The petitioner has filed this application u/s 438 Cr.PC with prayer for pre-arrest bail as he is apprehending arrest in connection with NCB Crime No. 13/2023 registered u/s

8(C)/22(C)/29 of the NDPS Act.

3. Heard Mr. S.C. Keyal, learned Standing Counsel for NCB.

4. It is submitted on behalf of the petitioner that he is physically handicapped and Annexure-A of the petition reveals that he is suffering from 60% orthopaedic disability. He is apprehending arrest as notice is issued against him in connection with the instant case.

5. The learned Standing Counsel has submitted the status report which reveals that there are incriminating materials against the petitioner.

6. On the contrary the learned counsel for the petitioner has submitted that the statements of the four accused u/s 67(c) of the NDPS Act marked as Annexure- E of the petition does not at all incriminate the petitioner. It is also submitted that the FIR reveals that WY tablets were recovered from the possession of the other accused named in the FIR and the petitioner's name is not mentioned in the FIR.

7. The learned Standing Counsel has relied on the decision of Hon'ble the Supreme Court in ***State of Haryana v. Samarth Kumar***, wherein it has been held that:-

"4. The High Court decided to grant pre-arrest bail to the respondents on the only ground that no recovery was effected from the respondents and that they had been implicated only on the basis of the disclosure statement of the main accused Dinesh Kumar. Therefore, reliance was placed by the High Court in the majority judgment of this Court in Tofan Singh vs. State of Tamil Nadu reported in (2021) 4 SCC1.

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7. The order of the Special Court granting regular bail to the respondents shows that the said order was passed in pursuance of the anticipatory bail granted by the High Court. Therefore, the same cannot be a ground to hold that the present appeals have become infructuous.

8. In cases of this nature, the respondents may be able to take advantage of the decision in To fan Singh vs. State of Tamil Nadu (supra). perhaps at the time of arguing the regular bail application or at the time of final hearing after conclusion of the trial.

9. To grant anticipatory bail in a case of this nature is not really warranted. Therefore, we are of the view that the High Court fell into an error in granting anticipatory bail to the respondents."

8. I have considered the submissions at the Bar with circumspection. The petitioner is

apprehending arrest although his name is not reflected in the FIR. He is to appear before the Investigation Agency and his statement is to be recorded. It appears that investigation may be adversely affected if the petitioner is insulated by an order of anticipatory bail. At this juncture there appears to be no justified ground to extent the privilege of anticipatory bail to the petitioner.

Petition is rejected at this stage.

JUDGE

Comparing Assistant