

GAHC010265392022



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

Case No. : AB/3799/2022

MD. MUJAKKIR HUSSAIN LASKAR
S/O ABDUL KALAM LASKAR,
VILL.- BORBOND PART- I,
P.S. AND DIST.- HAILAKANDI, ASSAM, PIN- 788164.

VERSUS

THE STATE OF ASSAM
REP. BY P.P., ASSAM.

Advocate for the Petitioner : MR S CHOUDHURY

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI

ORDER

Date : 01.02.2023

Heard Mr. S. Choudhury, learned counsel for the petitioner. Also heard Mr. R.G. Baruah, learned Additional Public Prosecutor for the State/respondent.

This is an application filed under **Section 438 Cr.P.C.**, praying for pre-

arrest bail by the petitioner, namely, **Md. Mujakkir Hussain Laskar**, in connection with **Hailakandi Police Station Case No. 681/2021**, registered **under Section 22 (C) of NDPS Act**.

The brief facts of the case is that one S.I. of police of Hailakandi P.S. lodged an FIR before the Officer-in-Charge of Hailakandi Police Station stating *inter alia* that on 05.08.2021, an information was received from a secret source that a large quantity of narcotic substances were kept concealed by the present petitioner in his pharmacy located at Lala road, Hailakandi. Subsequently, one GD Entry was recorded and search was conducted in the pharmacy of the present petitioner.

During search operation, 85 numbers of cough syrup bottles were recovered from the pharmacy of the petitioner. But the petitioner was absconding since the day of search and seizure in his pharmacy and he was also not available during investigation. Subsequently, part charge-sheet was submitted against the two persons namely, Didarul Islam and Munin Rasul Laskar. It is reflected in the charge-sheet that after arrest of the present petitioner, Md. Mujakkir Hussain Laskar, owner of 'Laskar Medicos', Hailakandi, final charge-sheet will be submitted.

Mr. Choudhury, learned counsel for the petitioner, submits that the petitioner has purchased the seized medicines from the wholesale medicine dealer by way of tax invoices credit on different dates. He further submits that the audit inspection was regularly done and accordingly, inspection report has also been submitted after calculating the stock keeping in pharmacy. The petitioner is apprehending arrest as it was alleged that the seized medicines were illegally kept in his pharmacy which is totally false. The petitioner is no way connected with the offence under the NDPS Act and he will co-operate with

further investigation if he may be protected under the provision of 438 Cr.P.C.

On the other hand, learned Additional Public Prosecutor for the State has fairly submitted that the petitioner was not available during the investigation and a large quantity of narcotic substances have been recovered from his pharmacy and the pharmacy belongs to the present petitioner which is reflected in the statements of the witnesses recorded during investigation. The two persons who were present on the date of inspection in the pharmacy of the present petitioner could not give satisfactory explanation about the seized products and thereafter, they were apprehended. A part charge-sheet has been submitted against both the persons arrested earlier. As the petitioner was not available during investigation, final charge-sheet is not submitted for which the process of the case is delayed. Hence, the bail prayer of the petitioner may not be considered at this stage.

I have considered the submissions made by the learned counsel for the parties and I have also gone through the case diary along with the relevant documents.

It is an admitted fact that the seized articles were recovered from the 'Laskar Medicos' owned by the petitioner located at Lala road, Hailakandi. The petitioner was absconding and evading arrest. The trial of the case is going on. Due to non appearance of the present petitioner, the investigating officer could not file the final charge-sheet.

At this juncture, it is pertinent to note that in the case of *Nathu Singh vs State of Uttar Pradesh*, reported in 2021 CRI.L.J.2593, The Hon'ble Supreme Court held that the discretionary power of the court under Section 438 Cr.P.C. cannot be exercised in an untrammelled manner. In paragraph 25, the Hon'ble Supreme Court observed as under:

“25. However, such discretionary power cannot be exercised in an untrammelled manner. The Court must take into account the statutory scheme under section 438 Cr.P.C. particularly, the proviso to section 438(1) Cr.P.C. and balance the concerns of the investigating agency, complainant and the society at large with the concerns/interest of the applicant. Therefore, such an order must necessarily be narrowly tailored to protect the interests of the applicant while taking into consideration the concerns of the investigating authority. Such an order must be a reasoned one”

In so far as the grant or refusal of the anticipatory bail is concerned, the Hon'ble Supreme Court in the case of *Siddharam Satlingappa Mhetre vs State of Maharashtra & Ors.* reported in (2011) 1 SCC 694 has laid down the parameters as under:

"112. The following factors and parameters can be taken into consideration while dealing with the anticipatory bail:

(i) The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;

(ii) The antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a Court in respect of any cognizable offence;

(iii) The possibility of the applicant to flee from justice;

(iv) The possibility of the accused's likelihood to repeat similar or the other offences.

(v) Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her.

(vi) Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people.

(vii) The courts must evaluate the entire available material against

the accused very carefully. The court must also clearly comprehend the exact role of the accused in the case. The cases in which accused is implicated with the help of [sections 34](#) and [149](#) of the Indian Penal Code, the court should consider with even greater care and caution because over implication in the cases is a matter of common knowledge and concern;

(viii) While considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors namely, no prejudice should be caused to the free, fair and full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused;

(ix) The court to consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;

(x) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail."

Further in the case of [Jai Prakash Singh vs. State of Bihar](#), reported in (2012) 4 SCC 379, the Hon'ble Supreme Court elucidated the principles for consideration of anticipatory bail which are as under:

"19. Parameters for grant of anticipatory bail in a serious offence are required to be satisfied and further while granting such relief, the court must record the reasons therefor. Anticipatory bail can be granted only in exceptional circumstances where the court is prima facie of the view that the applicant has falsely been enroled in the crime and would not misuse his liberty. [[D.K.Ganesh Babu v. P.T. Manokaran & Ors.](#), reported in (2007) 4 SCC 434]."

Having considered the given facts and circumstances of the case and

keeping in mind the parameters laid down by the Hon'ble Supreme Court in the judgments cited above and also the gravity of the offence, this Court is of the view that the petitioner cannot be granted anticipatory bail in this case.

In the result, the anticipatory bail application is dismissed. The petitioner is directed to surrender before the concerned investigating officer within a week from today.

The petition stands disposed of accordingly.

Return the case diary.

JUDGE

Comparing Assistant