

GAHC010007472024



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

Case No. : AB/192/2024

TARUN CHANDRA DEKA @ TARUN DEKA
S/O KRISHNA DEKA
VILL- BARGAON, P.S.KAMALPUR
DIST. KAMRUP, ASSAM
PIN-781101

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MS S S ZIA

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN

ORDER

Date : 19-02-2024

Heard Mr. HRA Choudhury, learned Senior counsel assisted by Ms. S. S. Zia, learned counsel for the applicant and also heard Mr. P. S. Lahkar, learned Addl. P.P. for the State respondent.

This application, under Section 438 Cr.P.C. is preferred by applicant, namely,

Tarun Chandra Deka @ Tarun Deka who has been apprehending arrest in connection with Garchuk P.S. Case No. 368/2023, under Sections 21(b)/29 of NDPA Act, for grant of pre-arrest bail.

The above noted case has been registered on the basis of an FIR lodged by one S. I. of Police, Jitendra Singha, I/c ISBT Out Post on 26.12.2023.

The essence of allegation made in the FIR dated 26.12.2023 is that acting on a tip off on 25.12.2023, at about 7.50 PM, he alongwith other staff apprehended four persons, namely, Intaj Ali, Pradip Paul, Moidul Islam and Prakash Kr. Singh in ISBT Campus and recovered 12 grams of suspected heroin from the possession of one accused, namely, Prakash Kr. Singh and seized the same in presence of witness, preparing seizure list.

Mr. Choudhury, learned Senior Counsel for the accused submits that the accused was working as Home Guard in the ISBT Police Out Post and in fact, he has apprehended one accused person, namely, Intaj Ali and alongwith the contraband substances, he had handed over the said accused to the informant, the I/C of the ISBT Out Post, and after some time he has noticed that the informant has allowed the person to leave the Police Out Post and when he protested to the same, then he has been implicated herein this case and that he is innocent and no way involved with the offence, alleged in the FIR and he is ready to cooperate with the investigating agency and therefore, it is contended to allow the petition.

On the other hand, Mr. Lahkar, learned Addl. P.P. submits that the I.O. has collected sufficient incriminating materials against the present applicant and in fact, he had handed over the contraband substance to one of the accused, namely, Intaj Ali and that the custodial interrogation of the applicant is

indispensible to find out the persons involved with the same, from where he has collected the aforementioned contraband substances and therefore, Mr. Lahkar, learned Addl. P. P. contended to oppose the petition.

Having heard the submission of learned Advocate for both sides, I have carefully gone through the petition and documents available on record and also perused the case diary with the assistance of Mr. Lahkar, learned Addl. P.P.

Perusal of the case diary indicates that the I.O. has collected some materials in support of the allegation made in the FIR. However, it appears that the material part of the investigation is almost over and the case is pending for collection of FSL report only. Further, it appears from the order dated 8.2.2024 passed by this Court in B.A.No.361/2024 that one of the co-accused has already been granted bail by this Court, considering the stage of investigation.

It also appears from the record that contraband substance allegedly seized from the co accused are of intermediate quantity and as such, the bar of Section 37 of NDPS Act does not come into play in the present case.

Having considered above and also considering the submission of learned Advocate of both sides, custodial interrogation of the applicant seems to be not warranted herein this case. And therefore, this Court is inclined to allow this petition. It is provided that in the event of arrest of the applicant, in connection with Garchuk P.S. Case No. 368/2023, under Sections 21(b)/29 of NDPS Act, he shall be released on pre arrest bail on his executing a bond of Rs.50,000/-with one surety of like amount to the satisfaction of the arresting authority.

The above privilege is, however, subject to the following conditions:

1. That the applicant shall make himself available for interrogation by the Investigating Officer as and when required;
2. That the applicant 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 from disclosing such facts to the Court or to any police officer; and

3. That the applicant shall not leave the jurisdiction of the learned Special Judge, NDPS, Kamrup (M) Guwahati, without prior permission.

Case diary be returned.

JUDGE

Comparing Assistant