

GAHC010043632024



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

Case No. : AB/550/2024

MD. ABDUL MALEK
S/O ABUTALEB MALLIK,
R/O KALMATI, KALMATI, DINHATA- II, P.S.- KALAMATI, DIST.- COOCH
BEHAR, WEST BENGAL- 736176.

VERSUS

NARCOTICS CONTROL BUREAU
REP. BY THE STANDING COUNSEL NCB.

Advocate for the Petitioner : MR. B CHOWDHURY

Advocate for the Respondent : SC, NCB

BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA

ORDER

Date : 25.06.2024

Mr. B. Chowdhury, learned counsel for the petitioner. Also heard Ms. M. Deka, learned counsel appearing on behalf of Mr. S. C. Keyal, learned Standing Counsel, NCB for the respondent.

2. This is an application under Section 438 of the Code of Criminal Procedure, 1973 for grant of pre-arrest bail to the accused/petitioner, who is apprehending arrest in connection with NCB Guwahati Crime No. 13/2023, corresponding to NDPS Case No. 17/2024, under Sections 22(C)/29 of the NDPS Act, 1985.

3. Scanned copy of the case record has been received. Perused the same. Heard both sides.

4. Mr. B. Chowdhury, learned counsel for the petitioner, has submitted that the petitioner is innocent and he is no way involved in the alleged offence and on the basis of the statement made by the co-accused, the notice under Section 67(C) of the NDPS Act was served on the present petitioner. But, as per the judgment of the Apex Court passed in the case of **Tofan Singh Vs. State of Tamil Nadu [(2021) 4 SCC 1]**, the statement recorded under Section 67(C) NDPS Act has no evidentiary value and it is inadmissible or it cannot be treated as a confessional statement. However, it is a fact that the accused/petitioner failed to appear before the I.O. complying the notice issued on him under Section 67 of the NDPS Act. But, in the meantime, the case has already been charge-sheeted against the 2 (two) co-accused persons, namely, Ajay Paul and Satish Barman, and the name of the present petitioner is not reflected in the Charge-Sheet. More so, nothing has been recovered from the possession of the accused/petitioner nor any contraband was recovered from the conscious possession of the present accused/petitioner. The present petition has been filed as the accused/petitioner has an apprehension of being arrested in connection with this case. However, he is ready to appear before the Investigating Agency

and will co-operate in the further investigation of the case if he is granted with the privilege of pre-arrest bail.

5. In this context, Ms. M. Deka, learned counsel appearing on behalf of the respondent/NCB, has submitted that during investigation, while recording the statement of the other accused persons, it revealed that the petitioner is the receiver of the Methamphetamine tablets which have been recovered from the possession of the co-accused person. Further she submitted that during investigation, it has also come to the knowledge of the Investigating Authority that both the arrested accused persons, namely, Ajay Paul and Satish Barman, had committed the crime of illicit trafficking of huge quantity of Methamphetamine tablets, which is much higher than the commercial quantity in violation of Section 8(c) of NDPS Act. The present accused/petitioner is also involved in the illicit trafficking of drugs as he being he receiver had constantly contacted with the other 2 (two) co-accused persons. More so, while submitting the Charge-Sheet, the I.O. also prayed for permission to continue the investigation against the present petitioner, along with 2 (two) others who are the suspect in the case, in the light of seized contraband and also prayed to file the Supplementary Charge-Sheet if anything is found against the present accused/petitioner. On earlier occasion, Mr. S. C. Keyal, learned Standing Counsel, NCB also relied on a decision of Apex Court passed in the case of **State by the Inspector of Police Vs. B. Ramu [2024 0 Supreme(SC) 130]** and emphasized on paragraph No. 11 of the judgment, which reads as under:

"11. In case of recovery of such a huge quantity of narcotic substance, the Courts

should be slow in granting even regular bail to the accused what to talk of anticipatory bail more so when the accused is alleged to be having criminal antecedents."

5. Ms. M. Deka, learned counsel appearing on behalf of the respondent/NCB, also relied on a decision of Apex Court passed in the case of **State of Haryana Vs. Samarth Kumar [2022 0 Supreme(SC) 1562]** and emphasized on paragraph Nos. 8 & 9 of the said judgment, which reads as under:

"8. In cases of this nature, the respondents may be able to take advantage of the decision in [Tofan 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."

6. Relying on the decision of above referred case of **Samarth Kumar (supra)**, Ms. Deka further submitted that the advantage of decision of the Apex Court passed in the case of **Tofan Singh (supra)** may be taken at the time of regular bail application or at the time of final hearing after conclusion of the trial, but in a case of anticipatory bail application, that may not be considered.

7. After hearing the entire submissions made by the learned counsels for both sides and also considering the materials available in the case record, note of the I.O. viz-a-viz the report submitted by the learned Standing Counsel, NCB, and other aspects of the case, it is seen that the case is still under investigation against the present accused/petitioner along with 2 (two) others. Further it is seen that the present petitioner had regularly contacted with the other co-accused persons as he being the receiver of the contraband.

8. In view of above, I find that custodial interrogation of the present

accused/petitioner may be necessary for the interest of just and proper investigation of the case and therefore, I do not find it a fit case to grant the privilege of pre-arrest bail to the accused/ petitioner at this stage and accordingly the same stands rejected.

9. In terms of above, this anticipatory bail application stands disposed of.

JUDGE

Comparing Assistant