

GAHC010050342024



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

Case No. : AB/669/2024

MONOWAR HUSSAIN
S/O- MUGRAB ALI R/O-VILL- GOMA, P.S.-TARABARI, SUB- DIV- BARPETA,
DIST-BARPETA, ASSAM, PIN-781930.

VERSUS

UNION OF INDIA
REPRESENTED BY THE STANDING COUNSEL, CUSTOMS DEPARTMENT

Advocate for the Petitioner : MR M RANA

Advocate for the Respondent : SC, CUSTOMS

BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI

ORDER

Date : 02.05.2024

Heard Mr. M. Rana, learned counsel for the petitioner. Also heard Mr. S.C. Keyal, learned Standing counsel, NCB.

2. By filing this bail application under **Section 438 Cr.P.C.**, the

petitioner, **Monowar Hussain** has prayed for pre-arrest bail, who is apprehending arrest in connection with **Customs Case No. 02/CL/NARC/AS/GAU/2023-24**, registered under Section **22(C) of NDPS Act**.

3. It is submitted by the learned counsel for the petitioner that the petitioner is dealing with a business of drugs and he has licence to that effect. It is also submitted that nothing was recovered from the possession of the petitioner. On the basis of placing of order by M/S B.S. Pharma, the petitioner supplied some medicines/drugs. It is further submitted that the name of the petitioner is not mentioned in the FIR and he is no way involved in the instant case. Considering the background of the case and the nature of the offence, benefit of pre-arrest bail may be extended to the petitioner.

4. On the other hand, Mr. Keyal, learned Standing counsel, NCB has vehemently objected to the prayer of the petitioner by stating that the petitioner is very much involved in the alleged offence and there is sufficient incriminating materials found in the case diary against the petitioner. It is also submitted that more than 59,000 of SPM-PPX capsules alleged to be narcotic substances were seized in connection with this case wherein the petitioner has supplied the same to the drug store. Considering the nature of offence, the prayer of the petitioner may not be considered at this stage.

In support of his submission, learned Standing counsel, NCB has placed reliance on a case law-

The State of Haryana vs. Samarth Kumar, reported in 2022 0 Supreme (SC) 1562.

5. By referring the judgment, the learned Standing counsel has pointed out that Hon'ble Supreme Court has held that in cases of this nature, the respondents may be able to take advantage of the decision in Tofan Singh vs. State of Tamil Nadu, reported in (2021) 4 SCC 1, perhaps at the time of arguing the regular bail application or at the time of final hearing after conclusion of the trial. To grant anticipatory bail in a case of this nature is not really warranted.

6. I have considered the submissions made by the learned counsel for the parties. I have also perused the case diary.

7. As per case diary, the allegation against the present petitioner is that he is involved in illegal business of narcotic substance. Considering the fact as well as background of the case, this Court is not inclined to grant bail to the petitioner. Hence, prayer for bail is rejected.

8. The pre-arrest bail application stands disposed of accordingly.

9. Return the case diary.

JUDGE

Comparing Assistant