

GAHC010053692024



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

Case No. : AB/716/2024

GULZAR HUSSAIN
D/O AFTAB HUSSAIN
R/O TALTOLA
P.S. KARIMGANJ
DIST. KARIMGANJ, ASSAM

VERSUS

THE STATE OF ASSAM
REP BY THE PP, ASSAM

Advocate for the Petitioner : MR H R CHOUDHURY

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

Date : 18-03-2024

Heard Mr. H.R. Choudhury, learned counsel for the petitioner. Also heard Mr. B. Sharma, learned Additional Public Prosecutor.

This application has been filed under Section 438 of the Code of Criminal

Procedure, 1973 by the petitioner apprehending his arrest in connection with Special NDPS Case no. 100/2023 arising out of Nilambazar Police Station Case no. 140/2023 under Sections 21(c)/25/29 of the NDPS Act, 1985.

The gist of accusations in this case is that on the basis of an FIR lodged by one S.I. Dipjyoti Malakar, alleging recovery of 768 grams of heroin from the accused persons who are named in the FIR involving the present petitioner, an investigation was initiated and ultimately on completion of investigation, charge sheet has been laid on 31.12.2023 against three accused persons involving the present petitioner under Sections 21(c)/25/29 of the NDPS Act. The name of the petitioner has been shown in the charge sheet as an absconder.

Learned counsel for the petitioner has submitted that the trial court has yet to issue any process against the present petitioner. However, as the name of the petitioner has been shown as an absconder, he is apprehending that he may be arrested in connection with this case. It is also submitted that no recovery has been made from his possession as alleged in the FIR as well as in the charge sheet. Learned counsel for the petitioner has also cited two orders of a coordinate bench of this court in A.B. case no. 3669/2023 passed on 06.12.2023 as well as in A.B. case no. 4730/2023 passed on 22.01.2024 wherein under similar circumstances, the petitioners of those cases were granted interim protection by the court.

Learned Additional Public Prosecutor on the other hand, has submitted that as the trial court has yet to issue process, there is presently no basis for apprehension of arrest by the present petitioner. It is also submitted that the contraband involved in this case is of commercial quantity. Hence, the embargo of Section 37 of the NDPS Act, would be applicable in this case.

As per the submissions made by the learned counsel for the petitioner, the trial court is yet to issue any process against the present petitioner, this court is of the considered opinion that this anticipatory bail application may be disposed of with a direction to the petitioner that he shall appear before the trial court within a period of 15 (fifteen) days of this order and may pray for regular bail before the said court and in the event of filing such an application, the trial court shall consider the same in accordance with law.

With the above observations, this anticipatory bail application is hereby disposed of.

JUDGE

Comparing Assistant