

GAHC010294082023



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

Case No. : AB/726/2024

KAZI GULAM MUSTAFA
S/O NASU MIA KAZI
R/O VILL- MATINAGAR
P.S.-SONAMURA
DIST- SIPAHIJALA
TRIPURA

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR
ASSAM

Advocate for : MR. M A CHOUDHURY

Advocate for : PP

ASSAM appearing for THE STATE OF ASSAM

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

Date : 11.09.2024

1) Heard Mr. A. Ahmed, learned counsel for the petitioner. Also heard Mr. R. J. Baruah, learned Additional Public Prosecutor for the State of Assam.

2) This application under Section 438 Code of Criminal Procedure, 1973 has been filed by the petitioner Kazi Gulam Mustafa, who is apprehending his

arrest in connection with Special (NDPS) Case No.96/2022 corresponding to the Bazaricherra P.S. 114/2022 under Sections 20(b)(ii)(c)/25/29 of the NDPS Act, 1985.

3) The learned counsel for the petitioner has submitted that the petitioner is apprehending his arrest in the above mentioned case as the Trial court has issued non-bailable warrant of arrest against the petitioner without issuing summons to him.

4) The learned counsel for the petitioner has submitted that the petitioner is ready to co-operate in the trial and hence prays for allowing him to go on bail.

5) On the other hand, the learned Additional Public Prosecutor has opposed the grant of anticipatory bail to the petitioner on the ground that commercial quantity of contraband is involved in this case and hence statutory embargo of Section 37 of NDPS Act will be applicable to this case.

6) On perusal of the scanned copy of the record it appears that after receipt of the Charge-sheet by the Trial court, the Trial court without issuing summons to the present petitioner had issued non-bailable warrant of arrest at the first instant on 12.05.2023.

7) The law in this regard has been settled that after receipt of the Charge-sheet in respect of the status of the accused shown in the Charge-sheet, the Trial court should have issued summons to him at the first instance.

8) In view of the above, this anticipatory bail application stands disposed of with a direction to the petitioner to appear before the Court of learned Sessions Judge/learned Special Judge, Karimganj in Special (NDPS) Case No.96/2022 within a period of 10 days from the date of this order. On his appearing before the said court, the petitioner may file an application for regular bail, if so advised. If such an application for bail is filed by the petitioner, the

same shall be considered by the Trial court as per law.

9) To facilitate the appearance of the petitioner before the Trial court as directed herein above, the operation of non-bailable warrant of arrest issued against the petitioner by the Trial court shall remain suspended for next 10 days.

10) With above observation, this anticipatory bail stands disposed of.

JUDGE

Comparing Assistant