

GAHC010074782024



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

Case No. : AB/986/2024

MADHAB SARKAR
S/O DINESH SARKAR, R/O EAST LAXMIBIL, BISHALGARH, SEPAHIJHALA,
TRIPURA-799102

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

Advocate for the Petitioner : MR. N J GOGOI

Advocate for the Respondent : PP, ASSAM

BEFORE
HON'BLE MRS. JUSTICE SUSMITA PHUKAN KHAUND
ORDER

28.05.2024

Head Mr N J Gogoi, learned counsel for the petitioner, Madhab Sarkar.

2. The petitioner has filed this application under Section 438 CrPC, as he is apprehending arrest in connection with Special NDPS Case No. 29/2023, arising out of Karimganj PS Case No. 233 of 2023, under Sections 21(c)/22(c)/25/29 of the NDPS Act.
3. Heard Mr B B Gogoi, learned Additional Public Prosecutor for the State of Assam.
4. It is submitted on behalf of the petitioner that charge sheet has been laid against

him solely because he was shown as the owner of the truck, whereas in reality, he is not the owner of the truck, but Biprajit Das is the owner of the truck, wherein the contraband was recovered. Annexure-3 is the RC, which clearly reveals that Biprajit Das is the owner of the truck, bearing Registration No. TR02D1691. Moreover, the contraband was not recovered from the possession of the petitioner. The statement of the co-accused was recorded and on the basis of the co-accused person's statement that the petitioner has been roped in connection with this case.

5. The learned counsel for the petitioner has relied on the decision of Hon'ble the Supreme Court in *Tofan Singh vs. State of Tamilnadu*, reported in (2021) 4 SCC 1, wherein it has been observed that an accused cannot be held responsible on the basis of the statement of the co-accused.

6. The learned counsel for the petitioner has also relied on the decision of Hon'ble the Supreme Court in *Mohd. Muslim Hussain @ Hussain vs. State (NCT of Delhi)*, in Special Leave Petition (Crl.) No. 915/2023, wherein it has been observed that continuous telephonic conversation with co-accused does not hold the co-accused liable.

7. The learned Additional Public Prosecutor has raised serious objection stating that the petitioner is booked for offences of carrying contraband of commercial quantity. Charge sheet has been laid against him, after a thorough investigation. At this juncture, the petitioner cannot pray for anticipatory bail when he was shown as absconder in the charge sheet. He has not earlier cooperated with the investigation. The petitioner is not

entitled to bail as he is booked under a serious offence.

8. I have considered the submissions at the Bar with circumspection.

9. I have also scrutinized the scanned copies of the of the Trial Court Record.

10. The FIR unfolds that a tip-off was received that a huge quantity of contraband was being transported from Mizoram to Karimganj, concealed in a truck bearing Registration No. TR-02-D-1961. A naka checking was held at bypass near Sherowali Family Dhaba and at 05:45 pm, the truck reached the check-post. Investigation was carried on following proper procedure. The driver, Sophik Mia showed a secret chamber constructed in the truck, which was opened with a screwdriver. 2.823 kgs of heroin was recovered from the truck along with 9.36 kgs of Yaba Tablets. The petitioner was alleged to be the receiver of the aforementioned contraband.

11. The FIR *prima facie* indicates the petitioner's involvement in a serious offence. Charge sheet has already been laid against the petitioner. The gravity of the allegation does not entitle the petitioner to anticipatory bail, as anticipatory bail ought not to be granted in serious offences under the NDPS Act or the Indian Penal Code.

12. In view of my foregoing discussions, there appears to be no justified ground to extend the privilege of anticipatory bail to the petitioner.

13. Petition stands rejected at this stage.

JUDGE

Comparing Assistant