

GAHC010092972024



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

**Case No. : AB/1219/2024**

SAHAJAMAL SK @ SHAHAJAMAL SHEIKH  
S/O ABDUL BAREK  
R/O BAGDOGRA  
P.S. TAMARHAT  
DIST. DHUBRI, ASSAM

VERSUS

THE STATE OF ASSAM  
TO BE REP. BY THE PP, ASSAM

**Advocate for the Petitioner : MR A. AHMED**

**Advocate for the Respondent : PP, ASSAM**

**BEFORE**  
**HONOURABLE MRS. JUSTICE MITALI THAKURIA**

**ORDER**

**Date : 16.07.2024**

Heard Mr. A. Ahmed, learned counsel for the petitioner. Also heard Mr. P. Borthakur, learned Additional Public Prosecutor for the State respondent.

This is an application under Section 438 of the Code of Criminal Procedure praying for grant of pre-arrest bail to the accused/petitioner, who is apprehending arrest in connection with Tamarhat P.S. Case No. 24/2024, under Sections 21(a)(b) of the NDPS Act, 1985.

Case Diary has been received. Perused the same. Heard both sides.

It is submitted by Mr. Ahmed, learned counsel for the petitioner, that the accused/petitioner is innocent and nothing has been recovered from his conscious possession and he has been falsely implicated in this case at the instigation of one Minhaz Ali Sk, who was apprehended by police while he was proceeding towards Musalmanpara Panchayat Road. Further he submitted that the seized contraband was allegedly recovered from the rented premises where some other tenants also resides and hence, it cannot be specifically stated that the recovery was made from his rented premises. He further submitted that the present accused/petitioner was implicated with the case on suspicion and there is no criminal antecedents on the part of the accused/petitioner and because of some business rivalry, the other co-accused, Minhaz Ali, made a conspiracy and falsely implicated the present petitioner in the instant case. He further submitted that there was no proper compliance of Section 42 of the NDPS Act, which is mandatorily required to be followed and the recovery of the contraband, which is alleged to have been made from the rented premises of the present accused/petitioner, is also much less than commercial quantity and hence, considering this aspect also, he may be granted with pre-arrest bail. More so, the petitioner cannot be roped on the basis of the statement made by the co-accused in view

of the judgment passed by the Apex Court in the case of **Tofan Singh Vs State of Tamil Nadu**, reported in **(2021) 4 SCC 1**, wherein it has been held that the statement of co-accused recorded under Section 67 of NDPS Act cannot be used as a confessional statement in an offence under the NDPS Act. However, he is ready and willing to co-operate with the I.O. in the further investigation if he is granted with the privilege of pre-arrest bail in connection with this case. The accused, being the permanent resident of his addressed locality, there is no chance of absconding if he is granted with the privilege of pre-arrest bail. Rather he will fully co-operate with the I.O. in the further investigation of this case.

Mr. Borthakur, learned Additional Public Prosecutor, has submitted in this regard that the co-accused is one Minhaz Ali and from his possession, some quantity of brown sugar was recovered. However, it is a fact that on the basis of the statement made by the co-accused, Minhaz Ali, the rented premises of the present accused/petitioner was searched and accordingly, brown sugar containing 37.63 gram from 9 plastic container, along with cash amount of Rs. 83,000/-, was recovered from the rent house of the present accused/petitioner. More so, he submitted that from the statement of the witnesses also, it is seen that the present accused/petitioner used to deal with the business of drugs peddling from his rented premises. Accordingly, it is submitted by the learned Additional Public Prosecutor that it is not at all a fit case to extend the privilege of pre-arrest bail to the present accused/petitioner and his custodial interrogation may be required for the interest of investigation.

After hearing the submissions made by the learned counsels for both

sides, I have also perused the Case Diary and considering the materials available in the Case Diary, I find that the present accused/petitioner may be the prime accused of the entire crime and hence, his custodial interrogation may be required to unearth some other facts of the case and also to book some other culprits involved in the case. And, therefore, I do not find it a fit case to extend the privilege of pre-arrest bail to the accused/petitioner at this stage and accordingly, the same stands rejected.

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

The Case Diary be sent back.

**JUDGE**

**Comparing Assistant**