

GAHC010097582024



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

Case No. : AB/1291/2024

MRINAL PATHAK
S/O HARIMOHAN PATHAK
R/O BHWANIPUR
P.O. BHAWNIPUR
DIST. BARPETA, ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. B P BORAH
Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI

ORDER

30.07.2024

Heard Mr. B. P. Borah, learned counsel for the petitioner. Also heard Mr. R. J. Baruah, learned Addl. Public Prosecutor, Assam appearing for the State respondent.

This petition under Section 438 Cr.P.C., is filed for granting the privilege of pre-arrest bail to the petitioner, namely, **Mrinal Pathak**, apprehending his arrest in connection with **Bazaricherra P.S. Case No. 33/2024** registered u/s

22C/25 of NDPS Act.

The Case diary, as called for, is placed before the Court.

It is submitted by the learned counsel for the petitioner that the petitioner has already sold his vehicle bearing registration No. AS 28 AC 0530 from which contraband items were recovered and seized. It is further submitted that the petitioner is no way connected with the alleged offence as he has sold the vehicle. Leaned counsel for the petitioner further submitted that an agreement for sale was executed between the petitioner and one Saddam Hussain regarding selling of the vehicle. However, it is true that the vehicle has not yet transferred to Saddam Hussain and the learned counsel prays to extend the benefit of pre-arrest bail to the petitioner.

On the other hand, Mr. Baruah learned Additional Public Prosecutor has produced the case diary and submits that the petitioner is still the owner of the vehicle from which 17,800 bottles of cough syrup were recovered. At this stage, though the petitioner has stated that he has sold the vehicle but the document produced by the petitioner is only an agreement for sale not the sale deed. Hence, learned Additional Public Prosecutor has opposed in granting bail to the petitioner.

I have heard the learned counsel for both the parties and also perused the case diary.

The grant of bail in NDPS cases where the recovery of commercial quantity of narcotic drugs is alleged, is circumscribed under the Narcotic Drugs and Psychotropic Substances Act, 1985. Section 37 which says that before grant of bail, the Court must have reason to believe that the petitioner had not committed the offence and in the event of his release, he would not commit

similar offence.

The issue was considered by the Hon'ble Supreme Court in the case of *State of Kerala and others vs Rajesh*, reported in (2020) 12 SCC 122 as well as in the case of *Narcotic Control Bureau vs Mohit Agarwal* reported in AIR 2022 SC 344 and *Union of India vs Ajay Kumar Singh @ Pappu*, reported in (2023) SCC online SC 3456.

In the case in hand, the recovery of huge quantity of narcotic drugs would not justify that the petitioner had no knowledge of the narcotic drugs nor there is any material to substantiate that the petitioner would not commit such offence in the event of release. Hence, this Court is not inclined to enlarge the petitioner on bail.

Accordingly, the bail application stands rejected.

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

JUDGE

Comparing Assistant