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

Case No. : AB/1777/2024

CHAKEDUL HAQUE
S/O- ABDUL CHATTAR ALI, R/O- VILL.- DAKSHIN BHALABHUT, P.O.-
BHALABHUT, P.S.- TUFANGANJ, DIST.- COOCH BEHAR, WEST BENGAL,
PIN- 736159.

VERSUS

THE NARCOTICS CONTROL BUREAU (NCB)
REPRESENTED BY PUBLIC PROSECUTOR.

Advocate for the Petitioner : MR I HAQUE,

Advocate for the Respondent : SC, NCB,

BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI

ORDER

Date : 18.11.2024

Heard Mr. I. Haque, learned counsel for the petitioner. Also heard Mr. S.C. Keyal, learned Standing counsel, NCB.

2. By filing this application u/s 482 of BNSS, 2023, the petitioner, namely, **Chakedul Haque** has prayed for bail apprehending arrest in connection with

NCB crime case no. 02/2024 under Section 8 (c)/22 (c) /29 of the NDPS Act pending in the court of learned Additional Sessions Judge No. 5, Kamrup (M), Guwahati.

3. This case relates to recovery of commercial quantity of narcotic drugs which were seized while trafficking from Manipur to Cooch Bihar, West Bengal.

4. The learned counsel for the petitioner has submitted that the NCB personnel recovered the suspected article from the possession of one Debasish Paul and accordingly the recovered items were seized. The said Debasish Paul was arrested by the NCB from the spot. During interrogation, the arrested accused disclosed that he was going to deliver the said seized articles to two persons namely, Saidul and Matiur Rahman at Cooch Bihar. Subsequently, Matiur Rahman was arrested on the basis of the statement of Debasish Paul recorded u/s 67 of NDPS Act. The statement of Matiur Rahman also disclosed that he met Saidul around 5 months back at Toofanganj and Saidul stated him that the present petitioner is also involved in trafficking of Narcotic drugs to earn money. Hence, the petitioner is apprehending arrest in connection with the aforesaid case. According to learned counsel for the petitioner, the petitioner is no way connected with the alleged offence and nothing was recovered from his possession. As such, the benefit of pre-arrest bail may be extended to the petitioner.

5. In response, learned standing counsel NCB, has opposed in granting bail to the petitioner by stating that large quantity of contraband items were recovered from the possession of the accused Debasish Paul. During investigation, it came to the light that the present petitioner is also involved in trafficking of Narcotic drugs. The CDR analysis also proved the connection

among all i.e., receiver, supplier and carrier. The communication between the petitioner and the co-accused Matiur Rahman is reflected through mobile. Though notice was sent to the present petitioner u/s 67 of the NDPS Act but he did not turn up. Subsequently, charge sheet has been laid showing him as absconder. As such, question of granting of pre-arrest bail to the petitioner does not arise at this stage of trial.

6. Having heard the learned counsel for the parties, the admitted position is that the alleged contraband was not seized from the possession of the petitioner and on the basis of the statement of the co-accused, the petitioner has been implicated and charge sheeted in this case.

7. Hon'ble Supreme Court in the case of ***State of Haryana vs. Samarth Kumar***, reported in (2022) 0 Supreme SC 1562, has held that in the case of this nature, the accused may be able to take advantage of the decision in ***Toofan Singh vs. State of Tamil Nadu***, reported in (2021) 4 SCC 1, perhaps at the time of arguing the regular bail application or at the time of final hearing after conclusion of the trial. To grant anticipatory bail in a case of this nature is not really warranted. Therefore, we are of the view that the High Court fell into an error in granting anticipatory bail to the accused.

8. In view of the ratio as laid down by the Hon'ble Supreme Court in the case of Smarth Kumar (Supra), this court is not inclined to grant the privilege of pre-arrest bail to the petitioner.

9. Hence, the anticipatory bail application is rejected.

The pre-arrest bail application is disposed of accordingly.

JUDGE

Comparing Assistant