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2024:GAU-AS:11622

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

Case No. : AB/2460/2024

HABIJUL HOQUE
S/O LATE ABDUL JALIL
R/O VIL- NO. 1 BOTALIMARI
P.S. BHURAGAON
DIST. MORIGAON, ASSAM

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PP, ASSAM

Advocate for the Petitioner : MR B BURAGOHAIN, MD A A HUSSAIN, MS. S E AHMED

Advocate for the Respondent : PP, ASSAM,

**BEFORE
HONOURABLE MR. JUSTICE KAUSHIK GOSWAMI**

ORDER

Date : 25.11.2024

Heard Mr. B. Buragohain, learned counsel for the petitioner. Also heard Mr. R. J. Barua, learned Additional Public Prosecutor for the State of Assam.

2. This is an application under Section 428 of the BNSS, 2023 for granting pre-arrest bail to the accused/petitioner, i.e. Habijul Hoque, who is apprehending arrest in connection with Bhuragaon P.S. Case No.59/2024 corresponding G.R. No.777/24 under Section 20(b)(ii) (B)/25/29 of the NDPS Act.

3. The case of the petitioner is that on 20.06.2024, the jurisdictional police personnel came to the house of the accused/petitioner for search operation and pursuant to an information from a reliable source that the accused/petitioner has kept a huge amount of cannabis at his house premises and was supposed to sell the same to various customers from his own residence with the aid of his wife namely Sabikun Nehar and his brother namely Rabikul Islam, the police personnel accordingly rushed to the spot after obtaining necessary formalities and upon reaching the spot, the accused upon seeing the police, fled from his house campus and though the police ran after him, he managed to escape. However, his wife and brother could not escape and accordingly they were apprehended. During search and raid operation at the house campus, a white colored plastic polythene was found inside the stock of their scrap yard. Upon the

polythene being opened in presence of available witnesses, botanical substance believing to be cannabis were found inside it and accordingly the same was seized in front of the witnesses.

4. It is the further alleged case of the prosecution that the aforesaid seized contraband weigh around 6.090 Kgs approximate.

5. After completion of formalities, the police personnel seized the suspected contraband articles and registered the case against the accused/petitioner along with his wife and brother.

6. Mr. B. Buragohain, learned counsel for the accused/petitioner submits that the accused/petitioner is nowhere connected with the alleged offence as alleged and that the seized alleged contraband articles were seized from the vehicle outside the house of the accused/petitioner and not in the scrap yard of the accused/petitioner as alleged by the police in the FIR.

7. He further submits that since the botanical substance alleged to be cannabis was recovered from the vehicle parked outside the house of the accused/petitioner, the accused/petitioner is apprehending arrest.

8. He further submits that the co-accused being his wife and brother have already been granted bail by the Special Judge, Morigaon, by order dated 20.08.2024.

9. Per contra Mr. R. J. Barua, learned Additional Public Prosecutor for the State of Assam vehemently opposes the prayer of the bail and submits that intermediate quantity of contraband articles have been

seized from the house of the accused/petitioner.

10. He further submits that FSL report as called for has arrived and the same confirms that the seized contraband articles are of cannabis in nature.

11. He further submits that the statements of the co-accused, i.e. wife and brother of the petitioner clearly implicates the accused/petitioner of the alleged offence.

12. He further submits that apart from the two co-accused there are independent witnesses whose statements have been also recorded under Section 180 of BNSS, 2023 and who have also incriminated the petitioner for alleged offence.

13. He accordingly submits that though the rigors of Section 37 of NDPS Act does not attract in the facts of the present case, however, the offence is grave to the society and therefore, this Court ought not grant bail to the accused/petitioner.

14. Heard the learned counsel appearing for both the parties and have perused the material available on record including the case diary and the FSL report as produced.

15. It appears that the statements of the co-accused and other witnesses have already been recorded by the Investigating Officer.

16. If further appears that apart from both the co-accused, there are independent witnesses who have also implicated the accused for the offence alleged.

17. It further appears that the seized contraband articles are not of commercial quantity but greater than the smaller quantity. It appears that the entire contraband articles which was available in the house as alleged has already been seized by the police personnels.

18. It further appears that because of the accused/petitioner being absconding, the investigation despite all the witnesses having been recorded and articles having been seized and FSL report having been received is not being able to be concluded.

19. It appears that the accused/petitioner is otherwise ready and willing to co-operate with the investigation.

20. It also appears that there is no adverse antecedence as such collected against the accused/petitioner by the Investigating Officer except the statement of the co-accused and other witnesses alleging the accused/petitioner to be involved in the offence alleged.

21. It further appears that there are no materials available on record to indicate that if the accused/petitioner is enlarged on bail, he is likely to free from justice.

22. Undoubtedly, the offence is grave against the society. However, this Court is not the convicting Court and is only considering whether to set the accused/petitioner on bail or not. The object of bail is not jail, but to secure the appearance of the accused during trial.

23. The personal liberty of the accused is a paramount importance and deprivation of the same is a matter of great concern. It should be curtailed only when it becomes imperative to the peculiar facts and

circumstances of the case.

24. In the present case as observed, the investigation though has substantially progressed but the same could not be concluded, in view of the fact that the petitioner is absconding.

25. In view of the endorsement of the learned counsel appearing for the accused/petitioner to the effect that the accused/petitioner will co-operate with the investigation, this Court is of the considered view that the custodial interrogation may not be justified for the ongoing investigation.

26. As such, considering the facts and circumstances of the case, the Anticipatory Bail application stands allowed.

27. Accordingly, it is provided that in the event of arrest, the accused/petitioner named above, shall be released on pre-arrest bail in connection with the above noted case, on furnishing bail bond of Rs. 50,000/- with two sureties of like amount to the satisfaction of the arresting authority, subject, of course, to the following conditions:-

- i) That the petitioner shall appear before the Investigating Officer within 10 days, failing which on and from the 11th day, the pre arrest bail order shall have no force;
- (ii) That the petitioner shall not leave the territorial jurisdiction of jurisdictional learned Special Judge, under the NDPS Act, without prior written permission from him;
- (iii) That the petitioner shall deposit his Passport/visa, etc if any, in the court of the learned jurisdictional Special Judge;

(iv) That the petitioner shall not hamper with the investigation, or tamper with the evidence of the case;

(v) That the petitioner shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer; and

(vi) That the petitioner shall appear before the Investigating Police Officer once in a week until the entire investigation of the case is completed and as and when called by the Investigating Police Officer for the purpose of investigation of the case.

28. With above observations and directions, this Anticipatory Bail application stands disposed of.

JUDGE

Comparing Assistant