

GAHC010204612023



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

Case No. : AB/3151/2023

BAHARUL ISLAM
S/O MUKTADIR UDDIN
R/O VILL- SOUTH BANDORKUNA
P.S. PATHERKANDI
DIST. KARIMGANJ, ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. M A CHOUDHURY

Advocate for the Respondent : PP, ASSAM

BEFORE
HON'BLE MR. JUSTICE ROBIN PHUKAN

ORDER

21.02.2024

Heard Mr. H.R.A. Choudhury, learned Senior counsel assisted by Mr. M.A. Choudhury, learned counsel for the applicant and also heard Mr. R.J. Baruah, learned Additional Public Prosecutor, Assam, appearing for the State respondent.

2. Apprehending arrest in connection with Karimganj P.S. Case No.210/2022 under Section 21(c)/22(c)/25/29 of the NDPS Act, this application under Section 438 Cr.P.C. is preferred by applicant, namely, Baharul Islam, for grant of pre-arrest bail.
3. The above-noted case has been registered on the basis of an FIR lodged by one Jyoti Prasad Das, S.I. of Police, Nagra Patrol Post under Bazarichera P.S. on 14.12.2022. The essence of allegation made in the aforesaid FIR is that acting on a tip off on 13.12.2022, the informant and other staff have apprehended one Mahindra Bolero, bearing Registration No.AR-01D-5996, and found one Kabir Ahmed as the driver of the vehicle and during interrogation he reveals that he concealed drugs inside a secret chamber of the vehicle and thereafter, conducting search of the vehicle the informant has recovered 131 nos. of shop cases containing suspected heroin, weighing 2113.7 gm and 5 nos. grey coloured packets containing 50,000 suspected YABA tablets, weighing 5382 gm and seized the same in presence of witnesses and during interrogation the other driver Gopendu Das @ Dipak stated that the seized heroin and YABA tablets belongs to one Kamal Uddin and Jakir.
4. Mr. Choudhury, learned Senior counsel for the applicant submits that after investigation the case has already been charge-sheeted showing the applicant as absconder in the charge-sheet and upon the said charge-sheet the learned Court below has taken cognizance of the offence under Section 21(c)/22(c)/25/29 of the NDPS Act against the applicant and other co-accused, where the applicant has been shown as absconder in the charge-sheet and thereafter, issued process to them. Mr. Choudhury further submits that the present applicant is the owner of the vehicle and that he has sold the vehicle one month back from the date of occurrence to one Kamal Uddin, but the formalities could not be completed in the same and except that piece of evidence no other materials are available against the present applicant and that he is ready to face trial and therefore, it is contended that he may be allowed to appear before the learned Court below and till then, interim protection may be extended to him.
5. On the other hand, Mr. R.J. Baruah, learned Additional Public Prosecutor, Assam, submits that there are materials against the applicant and based on which the I.O. has submitted charge-sheet against him showing him as absconder.

6. Since, charge-sheet has already been submitted and summon has been issued to the applicant by the learned Court below and since the applicant undertakes to appear before the learned Court below and to face trial, this Court is inclined to dispose of this anticipatory bail application by directing the applicant to appear before the learned Court below on or before **01.03.2024**, and to apply for regular bail and in the event of filing such an application, the learned Court below shall consider the same in accordance with law.

7. In the meantime, it is provided that in the event of arrest of the applicant, namely, Baharul Islam, in connection with Karimganj P.S. Case No.210/2022 under Section 21(c)/22(c)/25/29 of the NDPS Act, he shall be released on interim pre-arrest bail on his executing a bond of ₹ 50,000/- with one surety of the like amount to the satisfaction of the arresting authority, till his appearance before the learned Court below. The above privilege is, however, subject to the following conditions:-

- (i) The applicant shall appear before the learned Court below on or before **01.03.2024**; and
- (ii) The applicant shall not leave the jurisdiction of the learned Special Judge (NDPS Act), Karimganj, without prior permission.

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

Sd/- Robin Phukan
JUDGE

Comparing Assistant