

GAHC010213392023



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

Case No. : AB/3262/2023

SANTOSH KR MAHATO
S/O UMED LAL MAHATO
NEW GUWAHATI, RAILWAY COLONY NEAR KALI MANDIR,
BAMNIMAIDAM, GUWAHATI, DIST. KAMRUP (METRO), ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR H R CHOUDHURY

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN
ORDER

04.03.2024

Heard Mr. H.R. Choudhury, learned counsel for the applicant and Mr. R.J. Barua, learned Additional Public Prosecutor for the State respondent.

2. This application, under Section 438 of the Code of Criminal Procedure, is preferred by applicant namely, **Santosh Kr. Mahato**, who has been apprehending arrest in connection with **Special NDPS Case No. 12/2023**, pending before the learned Sessions Judge, Karimganj (corresponding to Bazaricherra P.S. Case No. 20/2023), under Sections

22[c]/25/29 of the NDPS Act, for grant of pre-arrest bail.

3. The said case has been registered on the basis of one FIR lodged by SI Niranjan Das, on 29.01.2023. The essence of allegations made in the FIR is that on 29.01.2023, during routine Naka checking at Naka check point of Churaibari, on NH 08, one six wheeler TATA LPT 1109 vehicle, bearing registration No. AS-01-MC-0376, which was coming from Guwahati towards Tripura, was intercepted and apprehended the driver namely, Mukesh Yadav and on checking the vehicle, 8 numbers of cartons, containing 1280 numbers of bottle of ESKUF Cough syrup were found and seized the same in presence of witnesses.

4. Mr. Choudhury, learned counsel for the applicant submits that after completion of the investigation the IO laid charge sheet before the learned court below, by showing the present applicant as absconder. Mr. Choudhury further submits that the applicant is the registered owner of the aforementioned vehicle and without his knowledge the driver has carried the contraband substance in his vehicle. Mr. Choudhury also submits that the applicant by executing one agreement, has leased the vehicle to Gati Kintetsu Express Private Limited Company and as such, he is no way involved with the operation of the vehicle and also not involved in the offence alleged in the FIR and that the applicant is ready to face the trial and will appear before the learned court below on each and every date and that the learned court below also issued only summon to him and therefore, it is contended to allow the petition.

5. On the other hand, Mr. Barua, learned Additional Public Prosecutor submits that having found material against the applicant, he has been charge sheeted and shown him as absconder. Mr. Barua further submits that the offences are serious in nature and therefore, it is contended to dismiss the

petition.

6. It is to be noted here that, to a pointed query of this Court Mr. Choudhury, learned counsel for the applicant submits that though the quantity of the contraband substance recovered from the possession of the co-accused is of commercial quantity, yet, the embargo under Section 37 of the NDPS Act will not come in the present case, inasmuch as nothing has been recovered from the possession of the present applicant.

7. Having heard the submissions of learned Advocates of both sides, I have carefully gone through the petition as well as the documents placed on record and also perused the scanned copy of the record received from the learned court below.

8. It appears that the applicant has been charge sheeted, by showing him as absconder in the charge sheet and that the learned court below has issued summon to the applicant, vide order dated 26.07.2023. Further, it appears that the case is now pending for appearance of the applicant before the learned court below.

9. Since the case has already been charge sheeted and the learned court below has issued summon to the applicant, without making any comment in the merit of the submission of the learned Advocates, this court is inclined to dispose of this application by directing the applicant to appear before the learned **Special Judge, NDPS, Karimganj** on or before 22.03.2024, and to apply for regular bail and in event of filing such an application, the learned Court below shall consider the same in accordance with law.

10. In the interim, it is provided that in the event of arrest of the applicant in connection with **Special NDPS Case No. 12/2023**, pending

before the learned Sessions Judge, Karimganj (corresponding to Bazaricherra P.S. Case No. 20/2023), under Sections 22[c]/25/29 of the NDPS Act, he shall be released on interim pre-arrest bail on his executing a bond of Rs. 50,000/- with one surety of like amount to the satisfaction of the arresting authority, till his appearance before the learned Court below on or before 22.03.2024.

11. The above privilege is however subject to the following conditions:-

[i] The applicant shall appear before the court of learned **Special Judge, NDPS, Karimganj**, on or before 22.03.2024; and

[ii] The applicant shall not leave the jurisdiction of the learned court below without prior permission;

12. In terms of above, this AB stands disposed of.

Comparing Assistant

JUDGE