

GAHC010242092024



2024:GAU-AS:12465

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

Case No. : AB/3027/2024

MOSTAFA ALI
S/O LT. NOUCHD ALI
A RESIDENT OF VILL- UDIANA
(SENGTALA), P.O. RANGIA, P.S. RANGIA, DIST. KAMRUP, ASSAM

VERSUS

THE STATE OF ASSAM
TO BE REP BY THE LEARNED PP, ASSAM

Advocate for the Petitioner : T A LASKAR, A BORBHUYAN

Advocate for the Respondent : PP, ASSAM,

BEFORE
HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

ORDER

10-12-2024

Heard Mr. T. A. Laskar, learned counsel for the petitioner and Mr. M. P. Goswami, learned Additional Public Prosecutor, Assam for the State.

2. Apprehending his arrest, the petitioner, namely, **Mostafa Ali**, son of late Nouchad Ali, resident of Village-Udiana (Sengtala), P.S.-Rangia, District-Kamrup has filed this application under Section 482 BNSS, 2023, seeking pre-arrest bail

in **Rangia P.S. Case No. 262/2024** registered under Section 111(2)(b) BNS, read with Section 20(b)(ii)(B) of the NDPS Act, 1985.

3. From the case diary, Mr. Goswami, learned APP submitted that the petitioner is a habitual offender and was also arrested on 14.02.2024 in connection with Rangia P.S. Case No. 64/2024 registered under Sections 20(b)(ii)(B)/21(b) of the NDPS Act.

4. During search by police personnel from Rangia Police Station in presence of independent witnesses, 2 numbers of white colour polythene bag containing leafy substances, suspected to be Ganja weighing about 5.981 Kgs, together with the plastic polythene bag were recovered from the house of the petitioner. However, on arrival of the police, the petitioner managed to flee away from his house and as such, he was not found in his house.

5. At this stage, Mr. Laskar, learned counsel for the petitioner submitted that the FIR of the case was lodged by one Sub-Inspector of Police. Further, the said SI of Police made the search in the house of the petitioner and also seized the suspected NDPS items from his house.

6. According to Mr. Laskar, learned counsel for the petitioner, police is not authorized to search and seize under the NDPS Act. To that extent, Mr. Laskar, learned counsel placed Notification of the Government of Assam dated 25.04.1995 as well as Notification dated 15.05.1995 clarifying that it is only the police personnel in the rank of Inspector can enter, search and seized and arrest under the NDPS Act. However, from the perusal of the FIR, it can be seen that the complainant, the concerned SI of Police indicated the Notification of the Government of Assam under No.Ex.0145/85/290 dated 25.04.1995 under the provision of Section 42(1) of the NDPS Act to enter, search, seize and arrest

without authorization.

7. From the reading of the Notification dated 25.04.1995, placed before the Court by Mr. Laskar, learned counsel, it can also be seen that the Government of Assam by the said Notification dated 25.04.1995 have empowered all Excise Officer above the rank of Assistant Inspector of Excise, Police Officer and above the rank of Sub Inspector of Police and Drugs Control Officer and above the rank of Inspector of Drugs to exercise the power and perform the duties specified in Section 42 within the areas of their respective jurisdiction and also authorized the said officer to exercise the powers conferred upon them under Section 67 of the NDPS Act w.e.f., the date of publication of the said Notification in the official Gazette.

8. As the concerned complainant is the Sub-Inspector of Police (UB) Branch as per the Notification dated 25.04.1995, he is authorized to enter, search, seize and arrest under the NDPS Act.

9. As the case diary reveals sufficient incriminating materials with regard to the involvement of the petitioner in the alleged crime, this Court is of the view that it is not a fit to grant pre-arrest bail to the petitioner in said **Rangia P.S. Case No. 262/2024.**

10. Accordingly, this pre-arrest bail application of the petitioner, **Mostafa Ali**, son of late Nouchad Ali, in said **Rangia P.S. Case No. 262/2024** registered under Section 111(2)(b) BNS, read with Section 20(b)(ii)(B) of the NDPS Act, 1985 **stands rejected.**

11. Return the case diary.

JUDGE

Comparing Assistant