

GAHC010287442023



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

Case No. : AB/4284/2023

SIRAJUL HAQUE
S/O AKKAS ALI
R/O VILL- DHUPGURI
P.S. GOBARDHANA
DIST. BAKSA, ASSAM
PIN- 781313

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. S A AHMED

Advocate for the Respondent : PP, ASSAM

BEFORE
HON'BLE MR. JUSTICE ROBIN PHUKAN

ORDER

10.01.2024

Heard Mr. S.A. Ahmed, learned counsel for the applicant and also heard Mr. P.S. Lahkar, learned Additional Public Prosecutor, Assam, appearing for the State respondent.

2. Apprehending arrest in connection with Gobardhana P.S. Case No.58/2023, under Section 353 IPC, read with Section 22(b)/29 of the NDPS Act, this application under Section 438 Cr.P.C. is preferred by applicant, namely, Sirajul Haque, for grant of pre-arrest bail.

3. It is to be noted here that the aforementioned case has been registered on the basis of an FIR lodged by one Abhijit Gogoi, O/C of Gobardhana P.S. on 07.02.2023. The essence of allegation made in the aforesaid FIR is that acting on a tip off on 06.02.2023, at about 10:10 p.m. conducted Naka checking and apprehended two persons on NH-31 in front of Simlaguri P.P. in one Baleno vehicle, namely, Md. Inamul Hoque and Md. Billal Hussain and also apprehended one Bisa Miya while he was trying to flee away by snatching one gun from a constable and one accused, namely, Sirajul Haque managed to flee away and recovered one plastic packet containing 10.62 gm of psychotropic substance and in another plastic packet containing 10.59 gm and in another plastic packet containing 20.65 gm and 7 plastic phials containing suspected psychotropic substance weighing 1.22 gm.

4. Mr. Ahmed, learned counsel for the applicant submits that the total quantity of contraband substance allegedly recovered from two accused was of 53.08 gm and the same is of intermediate quantity and as such, the embargo under Section 37 of the NDPS Act would not be applicable here in this case and that the present applicant is innocent and no way involved with the offence alleged in the FIR and that he is ready to face trial. Further, learned counsel for the applicant submits that after completion of investigation the I.O. has laid charge-sheet against the present applicant showing him as absconder in the charge-sheet and that he will appear before the learned Court below on each and every date and therefore, it is contended to allow the petition.

5. On the other hand, Mr. P.S. Lahkar, learned Additional Public Prosecutor, Assam, submits that the present applicant is the main culprit, who managed to flee away at the time of checking and that the case has already been charge-sheeted after completion of investigation under Section 353 IPC, read with Section 22(b)/29 of the NDPS Act.

6. Having heard the submission of learned Advocates of both sides and also considering the fact that investigation of the case has already been completed and charge-sheet has been submitted under Section 353 IPC read with Section 22(b)/29 of the NDPS Act, 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 02.02.2024 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. Having regards to the submission of learned Advocates of both the parties and also considering the facts and circumstances on the record, it is provided that in the event of arrest of the applicant, namely, Sirajul Haque in connection with Gobardhana P.S. Case No.58/2023, under Section 353 IPC, read with Section 22(b)/29 of the NDPS Act, he shall be released on interim pre-arrest bail till 02.02.2024 on his executing a bond of ₹ 50,000/- with one surety of the like amount to the satisfaction of the arresting authority. The above privilege is, however, subject to the following conditions:-

- (i) The applicant shall appear before the learned Court below on or before 02.02.2024;
- (ii) The applicant 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
- (iii) The applicant shall not leave the jurisdiction of the learned Chief Judicial Magistrate, Baksa, without prior permission.

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

Sd/- Robin Phukan
JUDGE

Comparing Assistant