

GAHC010294082023



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

Case No. : AB/719/2024

KAZI GULAM MUSTAFA
S/O NASU MIA KAZI
R/O VILL- MATINAGAR
P.S. SONAMURA
DIST. SIPAJHAR, TRIPURA

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. M A CHOUDHURY, MR. M ALAM, MR. A AHMED

Advocate for the Respondent : PP, ASSAM,

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

Date : 11.09.2024

- 1)** Heard Mr. A. Ahmed, learned counsel for the petitioner. Also heard Mr. R. J. Baruah, learned Additional Public Prosecutor for the State of Assam.
- 2)** This application under Section 438 Code of Criminal Procedure, 1973 has been filed by the petitioner Kazi Gulam Mustafa, who is apprehending his

arrest in connection with Special (NDPS) Case No.151/2022 corresponding to the Bazaricherra P.S. 185/2022 under Sections 20(b)(ii)(c)/25/29 of the NDPS Act, 1985.

3) The learned counsel for the petitioner has submitted that the Trial court has issued a non-bailable warrant of arrest against the petitioner without ascertaining due service of summons issued to him by the said court.

4) The learned counsel for the petitioner has submitted that the petitioner is ready to face the trial and, therefore, prays for allowing him to go on bail.

5) On the other hand, the learned Additional Public Prosecutor has submitted that this is a case involving commercial quantity of contraband. Hence, there is a statutory bar in granting the anticipatory bail to the petitioner.

6) I have perused the scanned copy of the case record and considered the submissions made by learned counsel for the petitioner, it appears from the record that on 30.09.2023, learned Sessions Judge, Karimganj had issued summons against the present petitioner, namely, Kazi Gulam Mustafa and on 07.12.2023 the non-bailable warrant of arrest was issued. However, from the record it does not appear that the learned Sessions Judge has either perused the report of the service of summons or has come to finding that that the summons were duly served upon the petitioner before issuing non-bailable warrant of arrest against him.

7) In view of the above, this anticipatory bail application is disposed of with a direction to the petitioner to appear before the Trial court within 10 days from the date of this order. After appearing before the Trial court, the petitioner may pray for regular bail before the said Court, if so advised. If such an application for bail is filed, the Trial court shall consider the same according to law.

- 8)** To facilitate the appearance of the petitioner before the Trial court, the operation of non-bailable warrant of arrest (NBWA) issued against the petitioner by the Trial court shall remain suspended for next 10 days.
- 9)** With above observation, this anticipatory bail stands disposed of.

JUDGE

Comparing Assistant