

GAHC010005922024



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

Case No. : AB/90/2024

IKBAL BAHAR HUSSAIN
S/O ABDUL NOOR,
VILL- PIRERCHAK, P.O. TILLABAZAR
P.S. AND DIST. KARIMGANJ, 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
HON'BLE MR. JUSTICE ROBIN PHUKAN

O R D E R

12.02.2024.

Heard Mr. H.R. Choudhury, learned counsel for the applicant and also heard Mr. R.J. Baruah, learned Addl. Public Prosecutor for the State respondent.

2. Apprehending arrest in connection with **Special NDPS Case No. 05/2015, under sections 22(C)/29 of NDPS Act**, this application, under Section 438 of Cr.P.C., is preferred by applicant, namely, Ikbah Hussain for grant of pre-arrest bail.

3. It is to be noted here that the above noted case has been registered on the basis of an FIR lodged by S.I. Moni Singha, I/C of Girishganj WP on 11.04.2015.

4. The essence of allegation made in the said FIR, dated 11.04.2015, is that acting on a tip off, the informant and his staffs conducted search in the Garage at Tillabazar and found one Auto rikshaw, bearing registration No. AS 10-C 4224 and found 397 bottles of Genosedyl and seized the same in presence of witnesses by preparing seizure list.

5. Mr. H.R. Choudhury, the learned counsel for the applicant submits that the applicant is innocent and no way involved in the offence alleged in the FIR. Mr. Choudhury, further submits that the applicant has not been named in the FIR and the owner of the Auto-rikshaw and the Garage suffered demise and the driver of the Auto-rikshaw could not be traced out and therefore, the I.O. had returned the case in final report. Thereafter, the learned court below had issued notice to the informant. In the meantime, the learned P.P. had filed one petition with a prayer to take cognizance of offence under section 22(C)/29 NDPS Act against garage owner namely, Md. Massadar Ali, owner of the Auto rikshaw namely, Basir Ahmed and Ikbah Hussain actual owner of the garage. Thereafter, the learned court had taken cognizance of the offence against the said three persons and issued process to them. Mr. Choudhury submits that though the applicant is the actual owner of the garage and he had leased it to accused Massadar Ali, and he is no way involved with the offence and his

custodial interrogation may not be required in the interest of investigation and he is ready to face trial and therefore, Mr. Chaudhury has contended to allow this petition.

6. Per contra, Mr. R.J. Baruah, the learned Addl. P.P. has opposed the petition on the ground that the applicant is the actual owner of the garage where the Auto rikshaw was found and from where the contraband substances were recovered. And therefore, it is contended to dismiss the petition.

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

8. In the case in hand, it appears from the scanned copy of the record of the learned court below that after completion of investigation the I.O. had already submitted Final Report having failed to apprehend the actual accused i.e. the driver of the Auto-rikshaw, namely, Sarifuddin. Thereafter, the learned court below had issued notice to the informant. In the meantime, the learned P.P. had filed one petition with a prayer to take cognizance of offence under section 22(C)/29 NDPS Act against garage owner namely, Md. Massadar Ali, owner of the Auto-rikshaw namely, Basir Ahmed and Ikbal Bahar Hussain the actual owner of the garage. Thereafter, the learned court had taken cognizance of the offence against the said three persons and thereafter issued process to them. Further, it appears that two accused, namely, Md. Massadar Ali, owner of the garage and Basir Ahmed, owner of the Auto-rikshaw already suffered demise.

9. It also appears from the scanned copy of the record of the learned court

below that the witnesses examined by the I.O. had implicated Md. Massadar Ali, owner of the garage and Basir Ahmed, owner of the Auto-rikshaw only, and they have already suffered demise. The name of the present applicant is not there in the FIR and also in the Final Report. Only because he is the actual owner of the garage, where the Auto-rikshaw was found and contraband substances were recovered, the learned P.P. had filed a petition before the learned court below to take cognizance against the present applicant and accordingly, the learned court below had taken cognizance against him and issued summon to him. Further, it appears that the applicant had leased out the garage to Md. Massadar Ali.

10. Indisputably, the quantity of contraband substances recovered and seized herein this case is of commercial quantity. And as such, the applicant has to satisfy the twin conditions of Section 37 of the NDPS Act that there is no reasonable ground to believe that: the accused is not guilty of the offence and that he is not likely to commit any offence while on bail.

11. But, from the materials on record, specially from the scanned copy of the record received from the learned court below and also from the submission of learned counsel for the accused, it cannot be said that there exists any reasonable ground for believing that the accused is guilty of the offence and that he is likely to commit any offence, while on bail. No criminal antecedent is brought to the notice of this court.

12. Having considered aforementioned facts and circumstances, and also the nature and gravity of the offence, and the punishment prescribed for the same, and further considering the role played by the applicant of this case, as well as the submission of learned Advocates for both the sides, this Court is of the view that this is a fit case where the privilege of pre arrest bail can be extended to the applicant. But, it appears from the scanned copy of the record that the

learned court below has issued only summon to the applicant.

13. And accordingly, this court is inclined to dispose of this application by directing the applicant to appear before the learned court below 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, without being influenced by any of the observation made herein above.

14. It is further provide that till then, in the event of arrest of the applicant, namely, **Ikbāl Bahar Hussain** in connection with **Special NDPS Case No. 05/2015**, under sections 22(C)/29 of 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. This privilege is however subject to following conditions:-

- (i) He shall appear before the learned court below on or before 29.02.2024;
- (ii) He 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;
- (iii) He shall not leave the jurisdiction of learned Special Judge, Karimganj without the previous permission;

JUDGE

Comparing Assistant