

GAHC010022522024



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

Case No. : AB/261/2024

HOFIZUR ROHMAN @ HIFJUR RAHMAN LASKAR
S/O ICHAK ALI LASKAR
VILL- RANGAUTI PART-I,
P.O. AND P.S. HAILAKANDI,
DIST. HAILAKANDI, ASSAM

VERSUS

THE STATE OF ASSAM
TO BE REP. BY THE PP ASSAM

Advocate for the Petitioner : MR. A M BARBHUIYA

Advocate for the Respondent : PP, ASSAM

**BEFORE
HON'BLE MR. JUSTICE ROBIN PHUKAN**

O R D E R

17.02.2024.

Heard Mr. A.M. Barbhuiyan, 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 **Hailakandi P.S. Case No. 274/2023, under sections 21(b)/29 of NDPS Act**, corresponding to **Special NDPS Case No. 17/2023**, this application, under Section 438 of Cr.P.C., is preferred by applicant, namely, **Hofizur Rohman @ Hifjur Rahman Laskar** 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 one FIR lodged by A.S.I. Rontu Das, I/C College Road TOP on 16.10.2023.

4. The essence of allegation made in the said FIR, dated 16.10.2023, is that acting on a tip off the informant and his staffs conducted search in the house premises of **Hofizur Rohman @ Hifjur Rahman Laskar** of Rangauti Part-I and recovered 1000 numbers of Yaba Tablet, weighing 111.97 grams, being concealed in a car bearing registration No. AS-11T-1123 and seized the same in presence of witnesses.

5. Mr. Barbhuiyan, the learned counsel for the applicant submits that the applicant is innocent and no way involved in the offence alleged in the FIR. Mr. Barbhuiyan, further submits that the contraband substances were not recovered from the conscious possession of the accused and that the quantity of contraband substance recovered from the vehicle is not of commercial quantity and that his ex-driver Hujail Ahmed Mazumder, due to personal grudge, had furnished misleading information to police after planting contraband substances in the vehicle, and that custodial interrogation is not required and he is ready to face trial and therefore, Mr. Barbhuiyan has contended to allow this petition.

6. Per contra, Mr. R.J. Baruah, the learned Addl. P.P. has vehemently opposed

the petition. Mr. Baruah submits that the contraband substances were recovered from a car being parked in the house premises of the applicant and the same belongs to his wife and that the I.O. has collected sufficient incriminating materials against the applicant and his custodial interrogation is necessary herein this case 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 case diary with the assistance of Mr. Baruah.

8. It is to be mentioned here that in the case of ***Siddharam Satlingappa Mhetre vs. State of Maharashtra and others***, reported in **(2011) 1 SCC 694**, specially to para 112, Hon'ble Supreme Court had laid the parameters, required to be taken into consideration by the Court, while granting anticipatory bail. The parameters are as follows:-

“122. The following factors and parameters can be taken into consideration while dealing with the anticipatory bail:

- (i) The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;
- (ii) The antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a Court in respect of any cognizable offence;
- (iii) The possibility of the applicant to flee from justice;
- (iv) The possibility of the accused's likelihood to repeat similar or the other offences.

- (v) Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her.
- (vi) Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people.
- (vii) The courts must evaluate the entire available material against the accused very carefully. The court must also clearly comprehend the exact role of the accused in the case. The cases in which accused is implicated with the help of sections 34 and 149 of the Indian Penal Code, the court should consider with even greater care and caution because over implication in the cases is a matter of common knowledge and concern;
- (viii) While considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors namely, no prejudice should be caused to the free, fair and full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused;
- (ix) The court to consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;
- (x) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail."

9. In the case in hand, it appears from the case diary that the I.O. has collected sufficient incriminating materials against the applicant. Further, it appears from the case diary that he has been absconding since the time of offence and that he is a habitual offender and that he was arrested in Hailakandi P.S. Case No.319/2022, under section 21(b)/29 NDPS Act. In the given background, repetition of similar offence and also misusing of liberty of pre-arrest bail cannot be ruled out. Besides, investigation is still going on and enlarging him on pre arrest bail will misdirect the investigation.

10. Though, Mr. Barbuiyan submits that the contraband substances were not recovered from the conscious possession of the applicant, the same left this court unimpressed in as much as the material collected so far in the case diary indicates that the vehicle, from where the contraband substances were recovered, was being parked in the house premises of the applicant and that his wife is the registered owner of the vehicle and that the applicant used the same. The issue of possession has been dealt with by Hon'ble Supreme Court in the case of ***Union of India v. Mohd. Nawaz Khan, (2021) 10 SCC 100*** as under:-

25. We shall deal with each of these circumstances in turn. The respondent has been accused of an offence under Section 8 of the NDPS Act, which is punishable under Sections 21, 27-A, 29, 60(3) of the said Act. Section 8 of the Act prohibits a person from possessing any narcotic drug or psychotropic substance. The concept of possession recurs in Sections 20 to 22, which provide for punishment for offences under the Act. In *MadanLal v. State of H.P. (2003) 7 SCC 465* this Court held that : (SCC p. 472, paras 19-23 & 26)

“19. Whether there was conscious possession has to be determined with reference to the factual backdrop. The facts which can be culled out from the evidence on record are that all the accused persons were travelling in a vehicle and as noted by the trial court they were known to each other and it has not been explained or shown as to how they

travelled together from the same destination in a vehicle which was not a public vehicle.

20. Section 20(b) makes possession of contraband articles an offence. Section 20 appears in Chapter IV of the Act which relates to offences for possession of such articles. It is submitted that in order to make the possession illicit, there must be a conscious possession.

21. It is highlighted that unless the possession was coupled with the requisite mental element i.e. conscious possession and not mere custody without awareness of the nature of such possession, Section 20 is not attracted.

22. The expression “possession” is a polymorphous term which assumes different colours in different contexts. It may carry different meanings in contextually different backgrounds. It is impossible, as was observed in *Supt. & Remembrancer of Legal Affairs, W.B. v. Anil Kumar Bhunja* (1979) 4 SCC 274 to work out a completely logical and precise definition of “possession” uniform[ly] applicable to all situations in the context of all statutes.

23. The word “conscious” means awareness about a particular fact. It is a state of mind which is deliberate or intended.

26. Once possession is established, the person who claims that it was not a conscious possession has to establish it, because how he came to be in possession is within his special knowledge. Section 35 of the Act gives a statutory recognition of this position because of the presumption available in law. Similar is the position in terms of Section 54, where also presumption is available to be drawn from possession of illicit articles.”

26. What amounts to “conscious possession” was also considered in *Dharampal Singh v. State of Punjab* (2010) 9 SCC 608, where it was held that the knowledge of possession of contraband has to be gleaned from the facts and circumstances of a case. The standard of conscious possession would be different in case of a public transport vehicle with several persons as opposed to a private vehicle with a few persons known to one another. In *Mohan Lal v. State of Rajasthan* (2015) 6 SCC 222, this Court also observed that the term “possession” could mean physical possession with animus; custody over the prohibited substances with animus; exercise of dominion and control as a result of concealment; or personal knowledge as to the existence of the contraband and the intention based on this knowledge.

11. Keeping these governing principles in mind, the issue has to be decided only after taking

evidence of the prosecution side. It is to be mentioned here that investigation has not yet been completed here.

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, and also in view of the observation, so made in the case of ***Siddharam Satlingappa Mhetre*** (supra) as discussed herein above, and striking a balance between the individual right of the applicant and that of the societal interest, this Court is of the view that this is not a fit case where the privilege of pre arrest bail can be extended to the applicant.

13. And accordingly, this petition stands dismissed. The case diary be returned.

JUDGE

Comparing Assistant