

GAHC010066582024



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

**Case No. : AB/863/2024**

AINUL HAQUE  
S/O TAJAJUL ALI, R/O DEBOSTHAN, P.S.-MURAJHAR, DIST- HOJAI  
(ASSAM)

VERSUS

THE STATE OF ASSAM  
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

**Advocate for the Petitioner : MR H R A CHOUDHURY**

**Advocate for the Respondent : PP, ASSAM**

**BEFORE**  
**HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA**

**ORDER**

**Date : 24-06-2024**

**1.** Heard Mr. H. R. A. Choudhury, learned senior counsel assisted by Mr. I. U. Chowdhury, learned counsel for the petitioner. Also heard Ms. N. Das, learned Additional Public Prosecutor for the State.

**2.** This application under Section 438 of the Code of Criminal Procedure, 1973 has been filed by the petitioner, namely, *Ainul Haque*, who is apprehending his arrest in connection with Special NDPS Case No. 38(H)/ 2024, arising out of

Hojai P.S. Case No. 530/2023 Sections 22(c)/29 of NDPS Act, 1985.

**3.** On the basis of an FIR by one Ranjit Buragohain before the Officer-in-Charge of Hojai Police Station, *inter alia*, alleging that huge quantity of SAMPEX+ Tablets containing Tramadol were recovered from the possessions of the accused persons named in the FIR, Hojai P.S. Case No. 530/2023 and investigation was initiated.

**4.** Ultimately, on completion of the investigation, charge-sheet was laid against four numbers of accused persons including the present petitioner under Sections 22(c)/29 of NDPS Act, 1985. The name of the present petitioner has been shown as an absconder in the charge-sheet.

**5.** The learned senior counsel for the petitioner has submitted that though the name of the present petitioner has been shown as an absconder in the charge-sheet, the learned Special Judge, Hojai had issued summons to the present petitioner, fixing 12.03.2024 for appearance of the present petitioner. Ultimately the case was fixed on 14.06.2024.

**6.** The learned counsel for the petitioner has submitted that on 14.06.2024, the Trial Court has again fixed NDPS Case No. 38(H)/2024 on 28.06.2024. It is submitted by the learned senior counsel for the petitioners that there are no materials against the present petitioner on record except the statement of the co-accused on the basis of which he has been implicated in this case. It is also submitted that nothing was recovered from his possession and as commercial quantity of contraband is involved in this case, he apprehends that he may be remanded to custody, if he appears before the trial court in pursuant to the summons issued to him.

**7.** The learned senior counsel for the petitioner has also submitted that though only summons were issued against the present petitioner, however, as he has been shown absconder in the charge-sheet, he apprehends that he may be arrested in the meanwhile, and hence he prayed for grant of anticipatory bail to the present petitioner.

**8.** On the other hand, learned Additional Public Prosecutor has submitted that as the trial court has only issued summons to the petitioner there is no apprehension of his getting arrested and he may be directed to appear before the trial court on the date fixed by the trial court for appearance of the present petitioner.

**9.** I have considered the submissions made by the learned counsel for both the sides.

**10.** Though, it is now settled that the anticipatory bail is maintainable even in the case of offences under NDPS Act, however, before invoking the provisions of Section 438 of the Code of Criminal Procedure, 1973 in favour of the petitioner, this Court has come to a conclusion there exist for an apprehension of getting arrested of the present petitioner which on perusal of the rerecords does not appears to be the case, as the Court of learned Sessions Judge, Hojai before which the trial of NDPS Case No. 38(H)/2024 is presently pending has issued only summons to the petitioner, this Court is of considered opinion that till the next date mentioned in the summons, there is no apprehension of the petitioner getting arrested during this period.

**11.** The plea raised by the learned senior counsel by the petitioner that the only material against the present petitioner on record is the statement of co-accused

under Section 67 of the NDPS Act, 1985 which is not admissible in evidence in view of the judgment of "**Tofan Singh –Vs- The State of Tamil Nadu**" reported in "**(2021) 4 SCC 1**" can very well be raised before the Trial Court on his appearance before the said court as the said Court is the competent court to consider the said plea and consider the bail application, if filed by the petitioner on his appearance before the said court.

**12.** In view of the above, this Court is of the considered opinion that this application is devoid of any merit and accordingly disposed of.

**13.** The petitioner may approach before the Trial Court on the date next fixed as mentioned in the summons received by him and on his appearance he may pray for bail before the said court which shall be considered by the said court as per law.

**14.** With the above, observation, this anticipatory bail application is disposed of.

**JUDGE**

**Comparing Assistant**