

GAHC040006932023



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

Case No. : BA 52/2023

1:Tanchung Namsa
S/o Lt. Karma Norbu,
R/o Village Boha, PO/PS Kalaktang, District West Kameng, Arunachal Pradesh.

VERSUS

1:THE STATE OF AP
Represented by the Public Prosecutor.

Advocate for the Petitioner : Adam Tatak

Advocate for the Respondent : P P of AP

BEFORE
HONBLE MR. JUSTICE KARDAK ETE

ORDER

Date : 06.06.2023

Heard Mr. T. Gyatso, learned counsel for the applicant and Ms. T. Jini, learned Addl. PP for the State of Arunachal Pradesh.

2. This is an application under Section 439 of the Code of Criminal Procedure, 1973 praying for grant of bail to the accused person, namely, ***Shri Sanjit Basumatary*** in connection with Balemu P.S. Case No.07/2022 under Section 20 (B) of the NDPS Act, 1985.

3. The case, in a nutshell, is that an FIR was filed by one Shri Kekdam Lingo, SDPO, Kalaktang, West Kameng District, Arunachal Pradesh stating that from his sources, it has been informed that some illegal activities is taking place in Bodo plain area in Rowta Range. Accordingly, the informant with SP, West Kameng District, OC, Balem and the team proceeded to the said place for conducting a long range patrolling. During the patrolling, they found 20-30 head loader carrying suspected cannabis which they apprehended one head loader, namely, Shri Sanjit Basumatary who was carrying suspected cannabis. However, the companions of Shri Sanjit Basumatary have fled away taking the advantage of dense forest and they left their belongings including suspected cannabis in the surrounding area. They have searched the surrounding area and recovered suspected cannabis bags and accordingly, OC PS Balem seized the suspected cannabis by following the due process of law.

4. The informant stated that after completion of process of seizure, they had spoken to the Magistrate of Kalaktang for destruction of seized items by giving reasonable explanation for not being able to transport all the seized item to concern Police Station as the number of bags were high and each bag also weighed heavy and they had to be carried uphill. The Magistrate, Kalaktang had given order to dispose the seized item on the spot over telephone. Accordingly, after collection of the seized items, they have destroyed by burning. However, the seized items from the accused person Shri Sanjit Basumatary (apprehended person) and the sample collected is brought to the Police Station for further action.

5. The accused Shri Sanjit Basumatary was arrested on 13.12.2022 after registration of the case being Balem P.S. Case No. 07/2022 under Section 20 (B) of NDPS Act and since then he is in jail.

6. The learned counsel for the applicant submits that the alleged accused is an innocent person and he has been co-operating with the investigating agency and shall appear as and when required by the Hon'ble Court.

7. The learned counsel for the applicant further submits that the accused person is a hard working man who earns his livelihood by engaging in daily wage work. The learned counsel for the applicant submits that the investigating agency has failed to follow the procedure provided under Section 50 of NDPS Act while arresting the alleged accused and seizing of the suspected contrabands inasmuch as, the seizure of the suspected contrabands was not made in the presence of any witness or in the presence of any Magistrate/ and or any Gazetted Officer whereas the people present at the time of the seizure were of the Police Personnel only.

8. The learned counsel for the applicant while referring to the deposition, examination-in-chief and in cross examination of witnesses, submits that the weight of contraband items mentioned in the seizure list was not accurate but merely of assumption. Moreover, the prosecution witnesses and the investigating agency are not even sure that whether the seized gunny bags of suspected contraband brought to the Police Station belongs to the accused person.

9. The learned counsel further submits that as per the investigating agency and the seizure list, a total of 33 (thirty three) gunny bags of suspected cannabis was seized but the investigating agency disposed off the 32 (thirty two) gunny bags of suspected contraband without following any procedures mentioned in Section 52 (A) of the NDPS Act and they have failed to make an inventory of the seized contraband and also failed to exhibit the gunny bags before the Court of Special Judge (NDPS Act), Bomdila. Therefore, considering the major procedure lapses on the part of the investigating agency coupled with the fact that the accused is in jail for more than 6 months and the statement of the accused under Section 67 of the NDPS Act had been recorded and the trial of the case is already in evidence stage, for which, the custody of the accused person for investigation is not at all required further, the accused person may be enlarged on bail with any condition that may be imposed by this Court to which the accused person shall religiously abide by.

10. This Court on 30.05.2023 had called for the scanned copies of the LCRs which is produced by the learned Addl. PP today.

11. Ms. T. Jini, learned Addl. PP while opposing the prayer for bail of the accused person submits that the records shows that provision required to be followed under the NDPS Act has been faithfully followed.

12. The learned Addl. PP while referring to the materials available on record, specifically, the seizure memo and the statement of the accused under Section 161 Cr.P.C. submits that the accused is not entitled to be released on bail as there are incriminating evidence as per the prosecution witnesses as well as other relevant documents available on the record.

13. The learned Addl. PP further submits that as per Section 37 of the NDPS Act, 1985 where the Public Prosecutor opposes the application for bail, the Court has to be satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail and it is the duty of the accused to establish that there are reasonable grounds for believing that the accused is not guilty of such offence.

14. In the instant case, the accused has miserably failed to establish such grounds for releasing him on bail, therefore, the present petition is liable to be rejected.

15. I have considered the rival submission advanced by the learned counsel for the parties.

Section 37 of the NDPS Act provides that:-

37... Offences to be cognizable and non-bailable-(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973;

(a) Every offence punishable under this Act shall be cognizable;

(b) No person accused of an offence punishable for offences under

Section 19 or Section 24 or Section 27A and also for offences involving commercial quantity shall be released on bail or on his own bond unless:-

(i) The public prosecutor has been given an opportunity to oppose the application for such release; and

(ii) where the public prosecutor opposes the application, the Court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

16. From a careful reading of Section 37 of the NDPS Act, it becomes clear that no person accused of an offence punishable shall be released on bail unless the Court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

17. Thus, the provision of Section 37 amongst other provides that the Court must be satisfied that there are reasonable grounds for believing that the accused is not guilty of such offence and that he is not likely to commit any offence while on bail.

18. When this Court comes to the facts of the present case, the applicant accused could not establish, in the opinion of this Court, that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

19. On consideration of the materials available on record, this Court finds that the Magistrate has issued a certificate required under Sub-section 2 of Section 52(A) of the NDPS Act certifying the correctness of the inventory. The testimony of the prosecution witnesses, on perusal, some material evidence against the accused

person. The chemical analysis of the seized items of suspected cannabis reveals that it contains the cannabis-satiba plant commonly known as Ganja. The statement recorded under Section 161 of the Cr.P.C. of the accused person Shri Sanjit Basumatary, though the evidentiary value is of confrontation, supports the contents of the FIR. Of course, this Court refrains from commenting on its admissibility to avoid any prejudice to parties.

20. In view of the above, there is a prima facie evidence against the accused person Shri Sanjit Basumatary. In such a situation, it would be against the interest of justice and perhaps will be improper to allow the accused person to go on bail.

21. In the result and for the reasons discussed above, the application praying for bail fails and accordingly, the same stands dismissed.

22. The bail application stands disposed of.

JUDGE

Comparing Assistant