

GAHC040009142023



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

Case No. : BA/63/2023

Gangjam Gangsa
S/o Late Gahgang Gangsa,
Village Jogan, PO/PS Longding, District Longding, Arunachal Pradesh.
Mobile No. 8811832043

VERSUS

THE STATE OF AP
Through the Public Prosecutor.

Advocate for the Petitioner : Tabit Tapak

Advocate for the Respondent : P P of AP

BEFORE
HONBLE MRS. JUSTICE MITALI THAKURIA

ORDER

Date : 24.07.2023

Heard Mr. T. Tapak, learned counsel for the petitioner. Also heard Mr. T. Ete, learned Additional Public Prosecutor for the State respondent.

- 2.** This is an application under Section 439 of the Code of Criminal Procedure, 1973, praying for grant of bail to the accused, who has been languishing in jail hazot in connection with Longding P.S. Case No. 49/2022, under Section 21(c) of the NDPS Act, 1985.
- 3.** Scanned copy of the LCR has already been received and I have perused the same.
- 4.** It is submitted by Mr. Tapak, learned counsel for the petitioner, that the accused is innocent and no way connected with the alleged offence and she was arrested merely on suspicion. More so, the investigating authority has already filed the Charge-Sheet and the FSL report is also filed along with additional Charge-Sheet. Further, as the case has already been Charge-Sheeted, there is no probability of influencing the witnesses or hampering or tampering the evidences. However, the learned Special Judge, Khonsa, rejected the earlier bail petition on the ground of non-receipt of FSL report and subsequently rejected the prayer for bail stating that as FSL report has been received, the accused cannot be granted bail. The accused is in custody since last 237 days from the date of his arrest, i.e. 15.11.2022, and considering her length of detention, she may be released on bail. Further it is submitted that the accused is a widow having minor children and in her absence, there is none to look after her family and hence, her bail petition may be granted on humanitarian ground also.

5. In this context, the learned Additional Public Prosecutor, Mr. Ete, has submitted that the case is registered under Section 21(c) of the NDPS Act, which is of commercial quantity and hence rigor of Section 37 of NDPS Act will be applicable here in this case and only considering the Charge-Sheet, the present accused cannot be granted with bail without any satisfaction of this Court that the accused is not guilty or not likely to commit any such offence while on bail. But, here in the instant case, it is seen that the accused is arrested under Section 21(c) of the NDPS Act and Charge-Sheet has already been filed finding a *prima facie* case against the accused under Section 21(c) of the NDPS Act. More so, the accused was also earlier arrested in connection with other NDPS matters, which is reflected from the order passed by the learned Special Judge. Thus, the accused also has the previous record of committing similar kind of offence and hence, it cannot be held that there no likelihood of committing such kind of offence if the accused is remain on bail.

6. The learned Additional Public Prosecutor further relied on a decision of Hon'ble Apex Court reported in **(2007) 7 SCC 798 (Union of India Vs. Shiv Shanker Kesari)**, wherein, in paragraph 6 thereof, it has been held as under:

"6. As the provision itself provides no person shall be granted bail unless the two conditions are satisfied. They are; the satisfaction of the Court that there are reasonable grounds for believing that the accused is not guilty and that he is not likely to commit any offence while on bail. Both the conditions have to be satisfied. If either of these two conditions is not satisfied, the bar operates and the accused cannot be released on bail."

7. After hearing the submissions made by the learned counsels of both sides, I have perused the case record and the order passed by the learned Special Judge, NDPS, Khonsa.

8. It is seen that the earlier bail applications of the present accused were rejected prior to the receipt of the FSL and even after receipt of the FSL report. It is also observed by the learned Special Judge that the accused was also earlier arrested in connection with 2 (two) other NDPS matters and accordingly, his bail prayer was rejected by the learned Special Judge.

9. As it is a case under the commercial quantity, the rigor of Section 37 of the NDPS Act will be applicable in the present case, which reads as under:

"37. Offences to be cognizable and non-bailable- (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2) of 1974),-
(a) every offence punishable under this Act shall be cognizable;
(b) no person accused of an offence punishable for a term of imprisonment of five years or more under this Act 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.

(2) The limitations on granting of bail specified in clause(b) of sub-section (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force on granting of bail".

10. Accordingly, it is seen that the learned Additional Public Prosecutor has vehemently objected to the bail petition and also it is also seen that there is nothing on record to opine that the accused is not guilty of such offence or there is no likelihood of committing any such offence further. Rather, the conduct of the accused proves that she is a habitual offender and in earlier 2 (two) occasions also, she was arrested in connection with the NDPS matter. Filing of the Charge-Sheet or the period of detention cannot be the criteria for allowing the accused on bail when it is a case under the commercial quantity.

11. In view of above and also considering the nature of offence, I am of the view that this is not a fit case where the privilege of bail can be extended to the accused and accordingly, the same stands rejected.

12. In terms of above, this bail application stands disposed of.

JUDGE

Comparing Assistant