

GAHC040009722023



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

Case No. : BA/67/2023

Bhagyeshwari Basumatary
Wife of Atul Basumatary,
Resident of Village Pukhuri Para,
PO Dhupguri, PS Oriamghar, District Golaghat, Assam.

VERSUS

THE STATE OF AP
Represented by the Public Prosecutor, Arunachal Pradesh.

Advocate for the Petitioner : Gautam Phukan

Advocate for the Respondent : P P of AP

BEFORE
HONBLE MRS. JUSTICE MITALI THAKURIA

ORDER

Date : 01-08-2023

Heard Mr. G. Phukan, the learned counsel for the petitioner
and Ms L. Hage, the learned Additional Public Prosecutor for the
State of Arunachal Pradesh.

2. LCR is received and the statements of witnesses are recorded under Section 161 Cr.P.C. It is submitted by the learned counsel for the petitioner that the present case is registered under Section 21 (b)/27 (A) of the NDPS Act. The accused person has spent in jail for 91 days and there is no material to attract Section 27 (A) of the NDPS Act. He further relied on the judgment of the Calcutta High Court passed in the case of **Amrita Singh @ Agarwal** , wherein, the petitioner was allowed to go on bail which case was registered under Sections 21 (b)/29/27 A of the NDPS Act. It is further submitted by the learned counsel for the petitioner that from the statement in the FIR it reveals that the petitioner may be a peddler but there is no allegation of harbouring or financing any other person of co-accused to attract under Section 27 A of the NDPS Act. Thus, this case also does not attract the rigor of Section 37 of the NDPS Act and to consider the bail application. Further, it is submitted that the accused is a permanent resident of the address provided and there is no chance of absconding, if he is enlarged on bail.

3. In this context, the learned Additional Public Prosecutor, Ms L. Hage has submitted that the petitioner is not only arrested in connection with this case but he was also arrested in connection with Gohpur P.S case No. 213 of 2022 under Section 365/307 IPC read with Section 120 b/15 1 of Arms Act. It is further submitted by the learned Additional Public Prosecutor that he is not a consumer but a peddler. He used to bring the Contra-Band from the border

areas and if such habitual offender is released on bail, may affect the entire society. And Section 36 A and sub-clause 4 of the NDPS Act is also attracted in this case wherein, the prosecution has the authority to extend the period of investigation up to 180 days. It is submitted that the petition should not be allowed to go on bail at this stage for the interest of investigation purpose and his further detention may be required. It is further submitted that FSL report is still awaited, considering this aspects the court should reject this bail application.

4. After hearing submissions made by the learned counsel for both the sides. I have perused the case diary and the statement of the witnesses recorded by the I.O in connection with this case. There are 3 witnesses in connection with this case. And from the statements made by the witnesses there found no materials in the statement made by the witnesses which can attract Section 27 A of the NDPS Act. It is a case, where as per the witnesses the intermediate quantity of Contra-Band was recovered from the possession of the accused from his rented premises but there is no mention that the accused was financing directly or indirectly or he was harbouring any other person for distribution of Contra-Band. Thus, it is seen that material so far collected by the I.O does not *prima facie* establishes the case under Section 27 (A) of the NDPS Act. More so, it is seen that the I.O. got sufficient time to investigate the case but till date I.O has fail to collect FSL report and also

process of the investigation has not been progressed as expected. Considering these facts, I find that this is a fit case where bail may be extended to the accused. Accordingly, accused, Shri Rohit Basumatary shall be enlarged on bail on furnishing a bail bond of Rs.20,000/- with two surety of like amount to the satisfaction of Special Judge (NDPS), Yupia under following conditions;

- 1) The accused shall appear before the I.O as and when called for.
- 2) The accused shall not hamper and temper with the evidence in whatsoever manner.
- 3) The accused shall not leave the jurisdiction of Special Judge (NDPS), Yupia, without prior permission.
- 4) If any of the conditions is violated, this bail will stand cancelled.

Accordingly, the bail application stands disposed of.

JUDGE

Comparing Assistant