

GAHC040013272023



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

Case No. : BA/96/2023

Nitya @ Nibya Tayeng
S/o Lt. Gobin Tayeng,
R/o Samuguri Village, PO/PS Namsai, District Namsai, AP.

VERSUS

THE STATE OF AP
Represented by the Public Prosecutor.

Advocate for the Petitioner : Sunil Mow

Advocate for the Respondent : P P of AP

BEFORE
HONBLE MRS. JUSTICE MITALI THAKURIA

ORDER

Date : 08.11.2023

Heard Mr. S. Mow, learned counsel for the petitioner. Also heard Ms. T. Jini, learned Additional Public Prosecutor for the State respondent.

2. This is an application under Section 439 of Cr.P.C, 1973, praying for grant of bail to the accused/petitioner, who was arrested on 17.05.2023 in connection

with Hayuliang P.S. Case No. 09/2023, under Section 17(C) of NDPS Act.

3. It is submitted by the learned counsel for the petitioner that the accused/petitioner is innocent and he has been falsely implicated in this case. More so, the accused has been behind the bars for more than 5(five) months. The learned further stressed on the seizure memo along with other documents, wherein it shows that in seizure memo the signature was made by one Executive Magistrate on 17.05.2023, but another Executive Magistrate put his signature on exhibit 'A' on the same date. Accordingly, it is submitted that the suspicion or doubt arises in regards to genuineness of the seizure memo and from the above circumstances it can be seen that the seizure was not made on the spot of the incident or in presence of any independent witnesses.

4. In this context, he also relied on the decision of the ***Hon'ble Apex Court*** reported in ***(2020) 12 SCC 492*** and mainly stressed on paragraph Nos. 6, 7 & 8, wherein, the Hon'ble Apex Court acquitted the accused due to non-compliance of Section 42 of the NDPS Act. He further submitted that the accused is ready to appear each and every date of hearing of this Case and there is no chance of absconding if the accused is allowed to go on bail.

5. In this context, Ms. T. Jini, learned Additional Public Prosecutor submits that there are sufficient incriminating materials brought against the present accused person and from the statement made under Section 161 Cr.P.C by the witnesses, it is seen that the accused is the person who led the recovery of the contraband

from the jungle which was alleged to have been carried in his own vehicle. Further she submits that the Case has already been charge-sheeted and from the status report also it is seen that the accused was also booked in another case in Assam and after obtaining bail from the said case he again committed such kind of offence. Thus, this is not the first offence committed by the present accused. Accordingly, she raised objection in granting bail at this stage.

6. After hearing the learned counsel for both the sides, I have also perused the status report and the scanned copy of the Case Diary as submitted by the learned Additional Public Prosecutor.

7. From the material available in the Case Diary, it is seen there are sufficient incriminating material found against the present accused and considering the prima facie materials, the case has also been charge-sheeted against him. There may be some discrepancies in the signature put by the learned Executive Magistrate in exhibit as well as in seizure memos but those may be considered at the final hearing of the case.

8. In the case of commercial quantity for considering the bail application, the rigour of Section 37 of NDPS Act will follow, which speaks that:

- (a) Every offence punishable under his 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 he is not likely to commit any offence while on bail.

9. Here in the instant case, it is seen that not only objection is raised from the Public Prosecutor but there is also no reason to believe that the accused is innocent or he will not commit such kind of offence in future. As from the status report submitted by the learned Additional Public Prosecutor, it is seen that he has already committed same kind of offence and this is the subsequent or second offence committed by the same person.

10. In view of the above, considering all aspects of the case, I do not find it a fit case to allow the accused to go on bail at this stage.

11. Accordingly, the bail application stands rejected and dismissed.

JUDGE

Comparing Assistant