

GAHC010007502023



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

Case No. : Bail Appln./281/2023

PAVEI SAICHAMIA AND ANR
S/O JONATHAN SAICHAMIA
R/O SARANAMI KHAIKHO VILLAGE, P.O. AND P.S. TADUBI
DIST. SENAPATI, MANIPUR

2: ANGELA
S/O JONATHAN SAICHAMIA
R/O SARANAMI KHAIKHO VILLAGE
P.O. AND P.S. TADUBI
DIST. SENAPATI
MANIPU

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. M. P. SARMA

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE AJIT BORTHAKUR

ORDER

10.03.2023

Heard Mr. J Ali, learned counsel for the accused petitioners as well as Mr. MP Goswami, learned Addl. P.P., Assam for the State respondent.

By this petition under Section 439 Cr.P.C., the accused/petitioners, namely **(1) Pavei Saichamia and (2) Angela** have prayed for grant of bail in connection **NDPS Case No. 88/2022 (G.R. Case No. 167/2022)** arising out of **Khatkhati PS Case No. 61/2022** u/s **21(c)/24/29** of the NDPS Act pending in the Court of learned Special Judge (NDPS Act), Karbi Anglong, Diphu.

The scanned copy of the case diary, as called for, is placed before the Court.

Mr. J Ali, learned counsel for the accused petitioners, submits that the accused petitioners have been in judicial custody since 25.07.2022 despite the fact that the alleged contraband was not recovered and seized from their conscious possession, but from the Maruti Gypsy vehicle driven by one Khavei @Veio. Mr. Ali further submits that the accused petitioner No. 2 has a minor breast feeding child aged about 13/14 months and the said child is presently seriously ill and she requires mother's attention. Therefore, Mr. Ali submits that at least the accused petitioner No. 2 may be directed to be released on interim bail subject to any condition for a specified period.

Per contra, Mr. M.P. Goswami, learned Addl. Public Prosecutor, submits that the accused petitioners hail from Manipur state and as the case involves 1330.24 grams of suspected heroin, that is, commercial quantity, recovered from the joint possession of the accused persons, in view of the bar contained in Section 37 of the N.D.P.S. Act in regard to bail, the prayer for bail may not be considered favourably.

The case relates to recovery and seizure of total 1330.24 grams of suspected heroin contained in 99 numbers of soap cases carried in two vehicles

by the accused petitioners on 24.07.2022 at about 3 pm from Manipur to Assam.

A perusal of the records reveal that charges under Sections 21(c) read with Section 29 of the N.D.P.S. Act have been framed against the accused petitioners vide order, dated 22.12.2022 and thereafter, not a single prosecution witness out of 5(five) listed witnesses is examined till date. Thus, the case is presently pending at evidence stage.

On perusal of the additional affidavit supported by a medical prescription, it is revealed that the prescription of medicines, dated 23.02.2023 is issued by a private doctor of Friend's Medicos in favour of a child namely, Samuel, aged about 1 ½ years, who is diagnosed with fever, cough and breathing difficulty. As per birth certificate, the date of birth of the child was 15.07.2021 and the accused petitioner No.2 is his mother.

In view of the prima facie incriminating material available on the case diary and the bar under Section 37 of the N.D.P.S. Act, the bail application of the petitioner No. 1 stands **rejected**.

However, upon sympathetic consideration of the sickness of the child and the accused petitioner No. 2 being the mother of the said child, this Court finds it expedient on humanitarian ground to grant interim bail to the accused petitioner No. 2.

Accordingly, it is provided that the accused petitioner No. 2, namely **Angela** shall be released on interim bail of **Rs.1,00,000/- (Rupees One Lakh)** with 2(two) sureties of like amount to the satisfaction of the learned **Special Judge (NDPS Act), Karbi Anglong** subject to the following

conditions-

(i) That the interim bail shall remain in force for 30(thirty) days from the date of release on interim bail and on expiry of the aforesaid period, that is, on 31st day before 4 p.m. the accused petitioner shall return to the jail;

(ii) That out of the two sureties, one must be a Govt. servant, subject to verification of identity, employment etc., if deemed expedient, by the learned Special Judge (N.D.P.S. Act), Diphu;

(iii) That the accused petitioner No. 2 shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer; and

(iv) That the learned Special Judge (N.D.P.S. Act), Diphu shall pass appropriate order for police watch on the accused petitioner No. 2 during the interim bail period.

With the above direction, the bail application stands disposed of.

JUDGE

Comparing Assistant