

GAHC010033212023



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

Case No. : I.A.(Crl.)/114/2023

DINABANDHU DAS @ KARTIK
S/O AMULYA KR DAS, R/O W/NO. 5, BORPARA, NEAR BUS STAND, P.S. AND
DIST.- BONGAIGAON.

VERSUS

THE STATE OF ASSAM AND ANR.
REP. BY PP, ASSAM

2:PRABIN BHERUA
SI OF POLICE

S/O BHABA BHERUAH

R/O BONGAIGAON PS

P.S. AND DIST.- BONGAIGAON

Advocate for the Petitioner :

Advocate for the Respondent : PP, ASSAM

**BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA**

ORDER

Date : 19.07.2023

Heard Mr. A. K. Bhuyan, learned counsel for the applicant. Also heard Ms. A. Begum, learned Additional Public Prosecutor for the State respondent.

2. This is an application under Section 389 of the Code of Criminal Procedure, 1973, praying for suspension of sentence passed by the learned Special Judge, Bongaigaon, Assam, in Special (Nar) Case No. 20(BGN)/2021, vide judgment and order dated 18.01.2023.

3. It is submitted by the learned counsel for the applicant, Mr. A. K. Bhuyan, that the applicant has already preferred an appeal, being CrI. A./50/2023, against the judgment and order dated 18.01.2023, passed by the learned Special Judge, Bongaigaon, Assam, in Special (Nar) Case No. 20(BGN)/2021, whereby, the applicant was convicted and sentenced to undergo RI for 10 (ten) years along with a fine of Rs. 50,000/- in default SI for 6 (six) months for the offence under Section 20(B) of the NDPS Act. Further it is submitted that as per the case of the prosecution and also from the report of the expert as well as from the seizure list, it is seen that 685 grams of contraband was allegedly recovered from the possession of the accused applicant and as per the report of the expert, the suspected contraband is 'Ganja'. However, the accused was convicted under Section 20(B) of the NDPS Act and sentenced to undergo 10 (ten) years of Rigorous Imprisonment along with a fine of Rs. 50,000/-. Thus, even if for the argument sake if it is admitted that the appeal fails, the case

ought to have been registered under Section 20 (A) and not under Section 20 (B) of the NDPS Act, wherein he has already been convicted by the learned Special Judge. Accordingly, it is a case where there is every possibility of succeeding the appeal. Further it is submitted that after filing of the Charge-Sheet, the accused was released on bail after 62 days of his judicial remand and thereafter he was regularly appearing before the learned Court below during the pendency of the trial. And, along with the period of the earlier detention, he is presently detained in jail hajot for 8 months 26 days till date. He has sufficient immovable properties in his name and there is no chance of absconding if the accused is released on bail as he has already appeared before the learned Trial court during the entire trial of this case.

4. In this context, the learned Additional Public Prosecutor, Ms. A. Begum, has admitted that it is a fact that the case ought to have been registered under Section 20 (A) of the NDPS Act instead of Section 20 (B) of the NDPS Act. However, there is sufficient ground to convict the accused applicant and hence, she submitted that the early hearing of the case is necessary instead of releasing the accused applicant on bail or suspending the sentence imposed on him.

5. Considering the submissions made by the learned counsels of both sides and also considering the entire circumstances of the case, I find it appropriate to allow this interlocutory application. Accordingly, the operation of the sentence passed by the learned Special Judge, Bongaigaon, Assam, in Special (Nar) Case No. 20(BGN)/2021, vide judgment and order dated 18.01.2023, stands suspended till disposal of the connected appeal, being CrI. A./50/2023.

6. Further, the applicant is hereby allowed to go on bail on his executing a bond of Rs. 20,000/- (Rupees twenty thousand) only with one surety of like amount to the satisfaction of the learned Special Judge, Bongaigaon, Assam.

7. In terms of above, this interlocutory application stands disposed.

JUDGE

Comparing Assistant