

GAHC010033962023



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

Case No. : Bail Appln./786/2023

SHAILEN NGATE @ SAILEN NGATE @ SHAILEN NARAH
S/O ARUN NARAH @ ARUN NGATE R/O BATUWA MUKH P.S DHEMAJI DIST
DHEMAJI ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. B K GOGOI

Advocate for the Respondent : PP, ASSAM

BEFORE
HON'BLE MR. JUSTICE ROBIN PHUKAN
ORDER

14.03.2023.

Heard Mr. B.K. Gogoi, learned counsel for the accused and Mr. P.S. Lahkar, learned Addl. P.P. for the State respondent.

2. This application under Section 439 of the Code of Criminal Procedure, 1973,

is preferred by accused, namely, Shailen Ngate @ Sailen Ngate @ Shailen Narah, who has been languishing in jail since 04.02.2022, in connection with the Special NDPS Case No.14/2022, arising out of Borpathar P.S. Case No.75/2021, under Sections 21(c)/29 of the Act, for granting bail.

3. The aforementioned case has been registered on the basis of an FIR, lodged by SI (UB) Manujal Gogoi of Borpathar Police Station on 29.11.2021, to the effect that on the same day, at about 10:10 A.M., acting on a tip off, they have conducted a Naka Checking at Khakrajan, on the NH-39 and at about 12:25 P.M., and intercepted a Tata Ultra Bus, bearing Regn. No.AS-12-AC-3477, which was coming from Dimapur towards Golaghat side and found two ladies namely, Neha Padun @ Kardong and Dina Sangson Narah and on conducting search of their body they found 13 numbers of soap boxes from the inner garments of Neha Padun @ Kardong and 12 numbers of soap boxes from the inner garments of Dina Sangson Narah, containing 330.49 grams of powdered substance and the same gave positive test for heroine, while tested on the spot with Drugs Detective Kits.

4. Mr. Gogoi, learned counsel for the accused submits that this is the second bail application and the first one was rejected by this court, vide order dated 15.12.2022, in BA No. 3145/2022, after perusing the case diary. Mr. Gogoi further submits that this second application is preferred on the ground of length of detention and also causing arrest of the accused without complying the provision of Section 50 of the NDPS Act, while recovering contraband substance from the co-accused and that nothing has been recovered from the possession of present accused. Referring to a decision of Hon'ble Supreme Court in **Vijaysinh Chandubha Jadeja vs. State of Gujarat**, reported in **(2011) 1 SCC 609**, Mr. Gogoi submits that compliance of section 50 of the NDPS Act is

mandatory and it required strict compliance. Referring to another two decisions of Hon'ble Supreme Court in **Sarija Banu @ Janarthani alias Janani @ Anr. vs. State** through **Inspector of Police**, reported in **(2004) 12 SCC 266**, and **Sujit Tiwari vs. State of Gujarat & Anr.** reported in **(2020) 13 SCC 447**, Mr. Gogoi submits that non-compliance of the mandatory provision of law will lead to an acquittal at the end of trial and the same has to be taken note of at the stage of consideration of bail. Mr. Gogoi further submits that the prosecution side, after framing charge against the accused, has examined one witness and the evidence, so adduced by the prosecution, has negate its own case.

5. On the other hand Mr. P.S. Lahkar, the learned Addl. P.P. has vehemently opposed the petition and submits that the quantity of contraband substance so recovered from the possession of the accused is of commercial quantity and the accused has to satisfy the requirement of section 37 of the NDPS Act, having been not satisfied with the privilege of bail cannot be extended to the accused at this stage. Therefore, Mr. Lahkar has contended to dismiss the petition.

6. Having heard the submission of learned Advocates of both sides, I have carefully gone through the petition and the documents placed on record and also perused the scanned copy of the record of the learned court below and the case law referred by Mr. Gogoi, the learned counsel for the accused. Also I have gone through the order dated 15.12.2022, in BA No. 3145/2022.

7. It appears from the order dated 15.12.2022, in BA No. 3145/2022, that the said bail application was rejected after perusing the case diary. Indisputably, nothing has been recovered from the possession of the present accused. The seized contraband substance was recovered from the possession of two co-accused and all the accused have been charge sheeted and charges have also been framed against them and one witnesses, in the meantime, one witness has

been by the prosecution side. Since commercial quantity of contraband substance was recovered and seized here in this case, the accused has to satisfy the requirement of section 37 of the NDPS Act. Indisputably also no attempt is being made by the accused to satisfy those two requirements. The accused mainly emphasized upon non-compliance of section 50 of the NDPS Act at the time of recovery and seizure. But, as held by Hon'ble Supreme Court in the case of **Vijaysinh Chandubha Jadeja** (supra) compliance or non compliance of section 50 of the NDPS Act is a matter of trial. This being the position, this court afraid, the ratios laid down in the case of **Sarija Banu @ Janarthani alias Janani @ Anr.** (supra) and in **Sujit Tiwari** (supra) would come into aid of the accused as the decision in **Vijaysinh Chandubha Jadeja** (supra) is a constitutional bench decision.

8. Though a contention has been raised by Mr. B.K. Gogoi, learned counsel for the accused that the accused is languishing in the jail hazoot since 04.02.2022, and the length of detention is one of the ground for filing this second Bail Application, no credence can be given to the said argument in view of the decision of Hon'ble Supreme Court in the case of **NCB vs. Mohit Agarwal**, reported in **[2022]) Supreme (SC) 619**, wherein it has been held that the length of period of his custody or the fact that the charge sheet has been filed and the trial has commenced, are by themselves are not consideration that can be treated as persuasive ground for granting relief to the accused under Section 37 of the NDPS Act.

9. In view of above and also in view of the embargo under Section 37 of the NDPS Act, this Court is of the opinion that this is not a fit case to grant the privilege of bail, under Section 439 of the Cr.P.C. to the accused persons. Accordingly, this bail application stands dismissed.

10. However, the learned Court below is directed to expedite the trial and conclude the same within a period of three months from today, without being influenced by any of the observation made herein above. If necessary, the learned court below shall take recourse to the provision of Section 309(1) of the Cr.P.C.

11. In terms of above, the bail application stands disposed of.

JUDGE

Comparing Assistant