

GAHC010061422023



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

Case No. : Bail Appln./1073/2023

AAMMA DEVI
W/O SUBASH SING
R/O HARINMAR
P.S. BARIARPUR
DIST. MUNGER, BIHAR

VERSUS

THE STATE OF ASSAM
TO BE REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. A AHMED

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE AJIT BORTHAKUR

ORDER

02.05.2023

Heard Mr. A. Ahmed, learned counsel for the accused petitioner as well as Mr. R.R. Kaushik, learned Addl. P.P., Assam appearing for the State respondent.

2. By this petition under Section 439 Cr.P.C., the accused/petitioner, namely

Aamma Devi has prayed for grant of bail in connection **Special (NDPS) Case No. 125/2022** pending in the Court of learned Sessions Judge, Karimganj arising out of **Nilambazaar P.S. Case No. 129/2022** under Sections **20(b)(ii)(c)/29** of the NDPS Act, 1985.

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

4. Mr. A. Ahmed, learned counsel for the accused petitioner, submits that the accused lady has been languishing in judicial custody for 248 days in connection with the instant charge-sheeted case, where even the charges are yet to be considered by the learned trial Court. Mr. Ahmed further submits that total 33.351 kg of ganja was recovered and seized from the possession of three accused persons including the accused petitioner. Mr. Ahmed also submits that only 10.410 kg of ganja was seized out of a bag carried by the present accused petitioner, which quantity falls within the intermediate quantity under the N.D.P.S. Act and as such, the rigors of Section 37 of the said Act is not applicable. Therefore, in the backdrop of facts, as there is no likelihood of completion of trial in near future, she may be directed to be released on bail subject to any condition(s).

5. *Per contra*, Mr. R.R. Kaushik, learned Addl. Public Prosecutor, submits that the case record reveals that the case is fixed for consideration of the charges by the learned trial Court and the F.S.L. report shows that the samples of seized substance gave positive tests for cannabis. Therefore, Mr. Kaushik submits that if the liberty of bail is granted to the petitioner at the present stage, the entire proceeding in the case may likely to be adversely affected.

7. The case relates to recovery and seizure of 33.351 kgs. of ganja contained

in 22 Nos. of packets from the possession of the accused petitioner and two others.

8. A perusal of the case record reveals that the accused petitioner along with two others has been in judicial custody since 02.09.2022.

9. The seizure memo shows that total 33.351 kgs. of ganja contained in 22 Nos. of packets were recovered and seized from the possession of three persons including the accused petitioner carried in 05(five) number of bags while they were coming together towards Nilambazar market.

10. The F.S.L. report shows that the sample of seized substance gave positive tests for cannabis.

11. After completion of investigation, the police submitted charge-sheet under Section 20(b)(ii)(c)/29 of the N.D.P.S. Act against all of the accused persons. The case is now fixed for consideration of the charges.

12. Therefore, this Court is of the opinion that at the present pre-charge stage of the case and in view of the bar in Section 37 of the N.D.P.S. Act, the liberty of bail in favour of the accused petitioner cannot be considered.

13. Accordingly, the bail application stands **rejected**.

14. However, it is provided that the accused petitioner shall have liberty to file bail application before the learned Court below at an appropriate stage of trial of the case.

This disposes of the bail application.

JUDGE

Comparing Assistant