

GAHC010070452023



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

Case No. : Bail Appln./1267/2023

CH. LUNKHOLAL MATE
S/O CH. THATKHOJANG MATE,
VILL- TENGNOUPAL, P.S. TENGNOUPAL
DIST. TENGNOUPAL,
STATE- MANIPUR

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MS. A. MEDHI

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE AJIT BORTHAKUR

ORDER

Date : 02.05.2023

Heard Ms. A Medhi, learned Counsel for the accused petitioner as well as Mr. RR Kaushik, learned Addl. P.P., Assam for the State respondent.

By this 2nd petition under Section 439 Cr.P.C., the accused-petitioner, namely, **Ch.Lunkholal Mate** has prayed for grant of bail in connection with Special (NDPS) Case No. 44/2021 under Sections 21 (C) /22(C) /29 of the NDPS Act (Palashbari PS Case 379/2021).

Scanned copy of case records is received.

It may be mentioned that vide order, dated 07.02.2022, the prayer for bail of the present accused was rejected in Bail Application 3339/2021.

Ms. A Medhi, learned Counsel for the accused petitioner, submits that the accused has been languishing in jail since he was shown arrested in connection with the case on 05.07.2021 despite being innocent. Ms. Medhi further submits that in fact, the accused has been continuing his detention since he was initially arrested in connection with Palashbari PS Case No. 461/2021, where he got bail from the learned trial Court in the corresponding Special (NDPS) Case No. 42/2021. It has been submitted that the accused petitioner is not named in the FIR. Therefore, it is submitted that the accused may be directed to be enlarged on bail subject to any condition.

Opposing the bail application Mr. RR Kaushik, learned Additional Public Prosecutor, submits that the accused is a permanent resident of Manipur State and charges under Sections 21 (C) /22(C) /29 of the NDPS Act were framed against the accused petitioner vide order, dated 17.11.2021. Thereafter Mr. Kaushik submits that only two prosecution witnesses are examined, and as such, in view of bar contained in Section 37 of the NDPS Act, the bail application of the accused petitioner may not be considered favourably.

The prosecution case relates to recovery and seizure of 470 packets of blue and black colour polythene packets containing 205 tablets in each packet totalling 96,350 tablets wrapped with polythene and net weight is 10 Kg 274 gram from the house of one Bolcy Kuki.

A perusal of the case record reveals that charges under Sections 21 (C) /22(C) /29 of the NDPS Act were framed against the accused petitioner vide order, dated 17.11.2021 and thereafter, only two prosecution witnesses are examined. Both the aforesaid material witnesses have not implicated the accused petitioner. There is no other evidence, oral or documentary, where the present accused petitioner has been *prima facie* reasonably implicated. This presumption and finding is, of course, subject to final outcome in trial of the case.

Therefore, despite the bar contained in Section 37 of the NDPS Act, on consideration of the case record, as a whole, this Court is of the opinion that further continuation of detention of

the accused petitioner in the interest of the ongoing trial of the case is not required.

Accordingly, it is directed that the accused petitioner, named above, shall be released on bail of **Rs. 1,00,000/- (One Lakh only)** with 2 (two) sureties of like amount to the satisfaction of the **learned Special Judge (NDPS Act), Kamrup at Amingaon** subject to the following conditions-

- i) That the accused petitioner shall continue to appear before the learned trial Court on all dates to be fixed from time to time till the case is disposed of; and
- ii) That the accused petitioner shall not directly or indirectly make any inducement, threat or promise to any of the remaining prosecution witnesses; and
- iii) That the accused petitioner shall refrain from committing any similar offences in future, of which he is accused of commission; and
- iv) That the accused/petitioner and his sureties shall produce the Voter Identity Card/Passport/Permanent Residential Certificate, whatever is available at the time of submission of the bail bond for satisfaction of the learned Court below regarding their identity and address and then return the same retaining photocopy thereof on record.
- v) That out of the two sureties, one must be a government servant subject to verification of the relevant documents, if deemed necessary and after such verification, the learned Court below shall return the original documents retaining legible scanned copy thereof on record for future reference.

Breach of any of the above conditions of bail shall render cancellation of the bail in accordance with law.

Be it mentioned that any observation made in this bail order shall have no bearing in the judicial discretion of the learned court below.

This disposes of the bail application.

JUDGE

Comparing Assistant