

GAHC010074552023



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

Case No. : Bail Appln./1259/2023

RAHELA PARBIN
W/O RABIR HUSSAIN
R/O SOULMARI
P.S. BILASIPARA
DIST. DHUBRI, ASSAM

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

25.05.2023

Heard Mr. A. Ahmed, learned counsel for the accused petitioner as well as Mr. B. Sarma, learned Addl. P.P., Assam for the State respondent.

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

Rahela Parbin has prayed for grant of bail in connection **Guwahati GRPS Case No. 175/2022 u/s 22(c)** of the NDPS Act, 1985.

3. The case diary as called for is placed before the Court.

4. Mr. A. Ahmed, learned counsel for the accused woman, submits that she has been in judicial custody for 148 days and that she is falsely implicated in the case. Mr. Ahmed further submits that the accused who works as a labourer was supposed to travel by train to Naharlagun in search of work. But on her way, she and others were stopped at Guwahati Railway station by the informant RPF Sub-Inspector and thereafter, handed over only her to the GRP, on accusation of having recovered narcotic drugs from her possession although nothing was recovered. Mr. Ahmed emphatically submits that the body of the accused woman was not searched in presence of a Magistrate or any Gazetted Officer as required under the mandatory provision of Section 50 of the N.D.P.S. Act and as such, the rigors of section 37 of the N.D.P.S. Act are not applicable in the instant case. In support of his submission, Mr. Ahmed, learned counsel, also submits that the mandatory provision of section 42 of the N.D.P.S. Act was not complied in the instant case. Therefore, Mr. Ahmed submits that for noncompliance of the aforesaid mandatory provisions of the N.D.P.S. Act, the accused petitioner is entitled to be released on bail. In support of his submission Mr. Ahmed has relied on (1) *Order passed by the Hon'ble Orissa High Court in the case of Raghu@Rahul Rajput Thakur Vs. State of Odisha in BLAPL No.2430/2021* (2) *Order passed by the Delhi High Court in Emeka Emmanuel Vs. The State in Bail Appln. 1231/2022* (3) *Order passed by the Hon'ble Supreme Court in Sarija Banu alias Janarthani alias Janani and Anr. Vs. State Through Inspector of Police, reported in (2004) 12 SCC 266*

5. Opposing the bail application, Mr. B. Sarma, learned Additional Public Prosecutor, submits that the accused woman was caught red handed while carrying 5940 Nos. Yaba tablets containing Methamphetamine and 10 grams of heroin as per seizure memo and the F.S.L. report while travelling by train. Mr. Sarma further submits that as per Notification, dated 11.04.2019 of the Ministry of Finance (Department of Revenue) empowers the officers of the RPF, of the rank of Assistant Sub-Inspector and above to exercise the powers and perform the duties specified under section 42 within the areas of their respective jurisdiction and also authorize them to exercise the powers conferred under Section 67 of the N.D.P.S. Act. It has been submitted by Mr. Sarma that there cannot be any dispute that commercial quantity of drugs was seized from the exclusive personal possession of the accused petitioner and relying on an order, dated 20.10.2022, passed by the High Court of Karnataka in *Joswin Lobo Vs. State of Karnataka in Criminal Petition No.6916/2021* with reference to the judgment rendered by the Apex Court, reported in *(2000) 9 SCC 549 [Supdt., Narcotics Control Bureau, Chennai v. R. Paulsamy]* that the provisions of section 37 of the N.D.P.S. Act cannot be judged in the matter regarding noncompliance of the formalities during consideration of bail application. Mr. Sarma, learned Additional Public Prosecutor, strenuously submits that as per the observation of the Hon'ble Supreme Court, no bail can be granted solely for alleged non-compliance of the provisions of the N.D.P.S. Act, which is to be tested during the course of trial only. Therefore, Mr. Sarma submits that in view of the bar under section 37 of the N.D.P.S. Act, the liberty of bail may not be granted to the accused woman who is allegedly a drug trafficker.

6. The F.I.R. reveals the allegation of recovery and seizure of 5940 Nos. Yaba tablets containing Methamphetamine and 10 grams of heroin while she was

travelling in train No.15817 DN (SKHV to NHLN) Dony Polo Express.

7. It is noticed that the accused woman has been in judicial custody since 22.12.2022, that is, for 155 days.

8. It is further noticed that as per the F.S.L. report, the samples of seized brown coloured powdery substance gave positive tests for heroin and the pink coloured tablets gave positive tests for Methamphetamine.

9. A perusal of the case diary reveals that the accused woman was detected having carried the seized suspected contraband by a joint team of RPF and Guwahati GRPS under an RPF Sub-Inspector, while Dony Polo Express train arrived at Guwahati Railway Station P.F. No. 1. The woman RPF personnel conducted body search inside the rail coach whereupon, the accused woman was brought to the RPF Post and after body search in presence of women RPF personnel and others, a seizure list was prepared. It is further revealed that thereafter, the said RPF Sub-Inspector handed over the accused woman along with the seized articles to the Officer-in-Charge of GRPS, Guwahati and filed the F.I.R.

10. It may be mentioned here that by a Notification, dated 11.04.2019, issued by the Ministry of Finance (Department of Revenue), the Central Government empowered the officers of the RPF, of the rank of Assistant Sub- Inspector and above, to exercise the powers and perform the duties specified under Section 42 within the areas of their respective jurisdiction and also to exercise the powers conferred upon them under Section 67 of the N.D.P.S. Act. In the instant case, the Sub-Inspector of RPF, Guwahati Post detained the accused woman as per

authority and got her searched by women RPF personnel in presence of other witnesses initially in person instead of taking her to the nearest Gazetted Officer or to the nearest Magistrate to conduct the search in person as per the provisions of section 50 of the Act. *Ex-facie*, it is revealed that the procedural safeguards under Section 50 of the N.D.P.S. Act was not complied with, but the Sub-Inspector of RPF, Guwahati followed the general provisions relating to searches provided in Section 100(3) Cr.P.C. Such search in person undertaken by the RPF Sub-Inspector in the instant case is whether a valid or invalid search is a matter to be decided by the learned trial Court during trial for the purpose of conviction or acquittal of the charges, whatever. In this regard the observation of the Karnataka High Court in *Joswin Lobo (supra)* is looked into as the provision of Section 42 of the N.D.P.S. Act, which is a mandatory, provision, as held in *Sarija Banu (supra)*, was complied with.

11. The investigation into the instant case is being at the incomplete stage, the principles followed in *Emeka Emmanuel (supra)* and *Raghu (supra)* cannot be scrutinized for application. The evidence, oral and documentary, prima facie reveals recovery and seizure of commercial quantity of contraband from the exclusive and conscious possession of the accused women and as such, rigors of section 37 of the N.D.P.S. Act are well applicable to the case.

12. For the above stated reasons, the bail application stands **rejected**.

As the accused has been in judicial custody, the investigating officer is directed to expedite investigation.

Return the case diary.

This disposes of the bail application.

JUDGE

Comparing Assistant