

GAHC010101342023



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

Case No. : Bail Appln./1682/2023

SENTILA PONGEN
W/O LATE MOA IMCHEN
R/O NAHARBARI
P.S. EAST DIMAPUR
DIST. DIMAPUR, NAGALAND.

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. S MUNIR

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE AJIT BORTHAKUR

ORDER

09.06.2023

Heard Mr. S. Munir, learned counsel for the accused petitioner as well as Mr. B. Sarma, learned Addl. P.P., Assam appearing for the State respondent.

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

Smti. Sentila Pongen has prayed for grant of bail in connection with **Special NDPS Case No.73/2021** pending in the Court of learned Special Judge (NDPS Act), Diphu, Karbi Anglong arising out of **Khatkhati P.S. Case No.94/2021** under Sections **21(c)/29** of the NDPS Act.

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

The case relates to recovery and seizure of 330.86 grams of heroin from the house of one Abdul Kadir.

It is noticed that the accused petitioner has been in judicial custody since 01.07.2021, that is, for 709 days (1 year 11 months 9 days).

A perusal of the case record reveals that after completion of investigation police submitted the charge sheet on 31.07.2021 against the present accused petitioner and another declaring one Saidul Islam as absconder. Thereafter, charges u/s 21(c)/29 of the NDPS Act was framed on 21.09.2022 against the accused petitioner and under Sections 21(c)/25/29 of the NDPS Act against co-accused Md. Abdul Kadir. There is a list 8(eight) prosecution witnesses out of which only 2(two) prosecution witnesses have been examined so far. After framing of charges on 21.09.2022 as many as 12 dates were fixed for evidence.

In view of the above situation, it can be said that the prosecution despite having given sufficiently long period to examine the prosecution witnesses numbering 8(eight) has not been able to examine the remaining prosecution witnesses depriving the accused's right to speedy justice enshrined in Article 21 of the Constitution of India.

In para 22 and 23 of the judgement rendered by the Hon'ble Supreme Court in *Mohd. Muslim @ Hussain -vs- State (NCT of Delhi)*, it has been observed as extracted hereinunder:-

“22. The danger of unjust imprisonment, is that inmates are at risk of “prisonisation” a term described by the Kerala High Court in A Convict Prisoner v. State²¹ as “a radical transformation” whereby the prisoner:

“loses his identity. He is known by a number. He loses personal possessions. He has no personal relationships. Psychological problems result from loss of freedom, status, possessions, dignity any autonomy of personal life. The inmate culture of prison turns out to be dreadful. The prisoner becomes hostile by ordinary standards. Self-perception changes.”

23. There is a further danger of the prisoner turning to crime, “as crime not only turns admirable, but the more professional the crime, more honour is paid to the criminal”²²[Working Papers- Group on Prisons & Borstals -1966 U.K.](also see Donald Clemmer’s ‘The Prison Community published in 1940 [Donald Clemmer, the Prison Community (1968) Holt, Rinehart & Winston, which is referred to in Tomasz Sobecki, ‘ Donald Clemmer’s Concept of Prisonisation’, available at https://www.tkp.Edu.pl/wpcontent/uploads/2020/12/Sobecki_sklad.pdf(accessed on 23 rd March, 2023)]). Incarceration has further deleterious effects - where the accused belongs to the weakest economic strata: immediate loss of livelihood, and in several cases, scattering of families as well as loss of family bonds and alienation from society. The courts therefore, have to be sensitive to these aspects (because in the event of an acquittal, the loss to the accused is irreparable), and ensure that trials – especially in cases, where special laws enact stringent provisions, are taken up and concluded speedily. ”

Besides the above, this Court has taken into consideration of the principle followed in *Nitish Adhikary @ Bapan -Vs- the State of West Bengal* passed in *Special Leave to Appeal (Crl.) No(s). 5769/2022* and *Amit Singh Moni -vs- State of Himachal Pradesh* passed in *Criminal Appeal No. 668/2020 [SLP (Criminal) No. 3813/2020]*.

Considering the facts and circumstances on record, more particularly, the above aspects, despite the bar contained in Section 37 of the NDPS Act, this Court is of the opinion that the accused woman, who is a permanent resident of Naharbari, P.S. East Dimapur, Nagaland, is entitled to the benefit of Section 439 Cr.P.C.

Accordingly, it is provided that the accused petitioner, named above, shall be released on bail of **Rs.1,00,000/- (Rupees One Lakh)** only with two

sureties of like amount to the satisfaction of the learned **Special Judge (NDPS Act), Karbi Anglong, Diphu** 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;
- ii) That the accused petitioner shall not directly or indirectly make any inducement, threat or promise to any of the remaining prosecution witness who are acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court;
- iii) That the accused petitioner shall refrain from committing any similar offences in future of which she is accused of commission; and
- iv) That one of the two sureties must be a government servant subject to verification of the relevant documents and the learned Court below shall return the aforesaid documents after such verification retaining legible scanned copy thereof on record.

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

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

This disposes of the bail application.

JUDGE

Comparing Assistant