

GAHC010106012023



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

Case No. : Bail Appln./1726/2023

HITOHO SUMI
SON OF AHETO SUMI,
RESIDENT OF VILLAGE- KUSHIABILL,
HOUSE NO. 485, SECTOR-4,
P.S.- EAST DIMAPUR,
DISTRICT- DIMAPUR, NAGALAND.

VERSUS

THE STATE OF ASSAM
REP. BY PP, ASSAM.

Advocate for the Petitioner : MR. A CHAUDHURY

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE AJIT BORTHAKUR

ORDER

31.05.2023

Heard Mr. B.K. Mahajan, learned counsel for the accused petitioner as well as Mr. R.J. Baruah, learned Addl. P.P., Assam for the State respondent.

2. By this petition under Section 439 Cr.P.C., the accused/petitioner, namely **Hitoho Sumi** has prayed for grant of bail in connection with **NDPS Case No.35/2022** under Section **21(c)** read with Section **29** of the NDPS Act pending in the Court of learned Special Judge (NDPS Act), Karbi Anglong, Diphu corresponding to **G.R. Case No.45/2022** arising out of **Bokajan P.S. Case No.15/2022**.

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

4. The case relates to recovery and seizure of 1039.86 grams of heroin from the possession of the accused petitioner and another.

5. It is noticed that the accused petitioner has been in judicial custody since 26.02.2022, that is, for 460 days.

6. A perusal of the case record reveals that charge sheet in the case was filed on 23.05.2022. Thereafter, the learned trial Court framed the charges under Sections 21(c) read with Section 29 of the NDPS Act against the present accused and another vide order, dated 14.06.2022. There is a list of 7(seven) prosecution witnesses in the charge-sheet. 2(two) prosecution witnesses (P.Ws 1 and 2), who are official witnesses, have been examined on 06.08.2022 and 28.04.2023 respectively. There is prima facie evidence to show that although the commercial quantity of contraband heroin was shown to be seized from the possession of the co-accused carried in his rice bag, there is also prima facie evidence that at the time of seizure the present accused petitioner was with him accompanying him to Bokajan.

7. In paragraphs 22 and 23 of the judgment rendered in *Mohd Muslim @Hussain Vs. State (NCT of Delhi)* in *Special Leave Petition (Crl.) No(s) 915/2023*, the Hon'ble Supreme Court observed has herein below extracted:-

“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. ”

8. Further, a coordinate Bench of this Court in the case of *Aminul Islam -vs- the Narcotic Control Bureau* passed in Bail Appl. No. 193/2023, has observed as hereinbelow extracted:-

“

23. Further, this Court is of the view that it is a settled position of law that in a case involving the NDPS Act, though the length of detention may be a relevant factor, the same shall not be the sole factor for determining a bail application and various other factors are taken into consideration like the quantity of the contraband, nature of the substance, nature of involvement etc. In the present case, the contraband is a

commercial quantity and the substance is chemically manufactured drug. Moreover, Section 37 of the NDPS Act lays down that before granting a bail, the relevant factors are that the Court should come to a satisfaction that prima facie the petitioner is not guilty of the offence and also the petitioner has to satisfy the Court that in case bail is granted, he is not likely to commit further offence. The aforesaid two factors do not seem to be fulfilled in the present case.”

9. However, in the backdrop of the above facts and circumstances, this Court is of the opinion that at the present stage of trial of the case, it is expedient in the interest of a fair trial of the case that some more witnesses should be examined before considering release of the accused petitioner on bail.

10. Accordingly, the bail application of the accused petitioner stands **rejected**.

11. However, it is provided that the learned trial Court shall complete examination of the remaining prosecution witnesses numbering 5(five) within **a period of 3(three) months** from the date of receipt of a copy of this order, failing which, the accused shall be released on bail subject to stringent conditions.

With the above direction, the bail application stands disposed of.

JUDGE

Comparing Assistant