

GAHC010111802023



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

Case No. : Bail Appln./1894/2023

SAIRA BEGUM AND ANR
W/O- LATE UNUS ALI, R/O- DIGBOI CHARIALI RAIL GATE, P.S. DIGBOI,
DIST.- TINSUKIA

2: FUSKI ALI
S/O- LATE UNUS ALI
R/O- DIGBOI CHARIALI RAIL GATE
P.S. DIGBOI
DIST.- TINSUKI

VERSUS

THE STATE OF ASSAM
REP. BY P.P., ASSAM

Advocate for the Petitioner : MS B R A SULTANA

Advocate for the Respondent : PP, ASSAM

BEFORE
HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

27/06/2023

Heard Ms. B R A Sultana, learned counsel for the petitioners and Mr. M P Goswami, learned Additional Public Prosecutor, Assam for the State.

This application under Section 439 Cr.P.C. has been filed by the petitioners, namely, **(1) Sri Saira Begum** and **(2) Sri Fuski Ali**, seeking bail in **NDPS Case No. 32/2021** arising out of **Duliajan P.S. Case No. 262/2021** registered under Section 22(C) of NDPS Act, 1985, presently pending before the Court of learned Special Judge (NDPS)-cum-Additional Sessions Judge, Dibrugarh; wherein they were arrested on 24.05.2021 and since then they are in custody.

The petitioners contended that in said Duliajan P.S. Case No. 262/2021/NDPS Case No. 32/2021, they are in custody for more than last two years and are confined in jail where trial of the case is still progressing. Petitioners also contended that number of persons were arrested in said Duliajan P.S. Case No. 262/2021 and are kept in jail in connection with the said case and it cannot be said that the petitioners herein are involved in the case, since in all the Forwarding Reports of the arrested accused persons of the case same vehicle has been shown for carrying and supplying suspected Heroin.

Petitioners also stated that both of them are from the same family and if they are confined in jail their home will be destroyed and there was none to look after their family. Hence, this bail application by the petitioners, named above.

Perused the relevant record that was called for by the Court from the office of the learned Special Judge (NDPS)-cum-Additional Sessions Judge, Dibrugarh.

Case record reveals that because of large activities of drugs peddling and illegal trading of narcotic substances including Heroin and others in Dibrugarh, Duliajan, Tinsukia area; police took steps in that regard and in that process on the basis of secret information received, one of the accused Birju Garh @ Biju of Girial Tea Estate, Gojalbasti was apprehended who was running the illegal business of such narcotic substances at Dibrugarh, Duliajan area. After he was taken into custody, another drug peddler Sahil Balmiki @ Sabit was apprehended from Duliajan, who was found involved in peddling of drugs with said Birju Garh @ Biju. Later, from them police came to know the

involvement of the petitioners herein regarding their illegal trade of narcotic substances and doing their business near Rail Line Chariali under Digboi Police Station of Tinsukia district from a small house surrounded by bamboo wall. On reaching the said place police apprehended both the petitioners and another person namely, Santanu Borah and from the possession of the petitioners (i) 75 nos. of small plastic containers containing suspected Heroin in each container total weighing 10.24 Grms, (ii) one plastic packet containing 100 nos. of empty plastic containers that are used to fill with suspected Heroin, (iii) suspected Ganja total weighing 28.455 Kgs in (a) one sealed packet of suspected Ganja covered with khaki colour plastic and piece of calendar weighing 5.225 Kgs., (b) one plastic bag full of suspected Ganja weighing 2.554 Kgs (c) total 5.083 Kgs of suspected Ganja covered by one star cement bag (d) one packed of Ganja covered with khaki colour packing weighing 7.412 Kgs (e) one plastic white colour bag containing 4.136 Kgs of Ganja and (f) one signature first pan masala yellow colour bag containing 3 nos. of plastic carry bags in loose condition total weighing 3.235 Kgs (without pan masala bag); (iv) one VIVO 1904 mobile handset of the petitioner No. 1, (v) One APPA-31 mobile handset of said Santanu Borah, (vi) total cash of Rs. 1,88,000/- and (vii) two nos. of V-40 injections used for taking drugs which were accordingly seized by following due process from the possession of the petitioners from the said bamboo hut. The seized and recovered materials gave the positive test for Heroin with 84.71 percentage as well as Cannabis (Ganja) as per the report of the FSL submitted in the case.

In the said case after filing of the Charge-Sheet/Offence Report, the Court of the learned Special Judge (NDPS)-cum-Additional Sessions Judge, Dibrugarh in said NDPS Case No. 32/2021 arising out of Duliajan P.S. Case No. 262/2021 framed charge against 11 accused persons on 18.08.2022 including the present petitioners, under Sections 20(b)(ii)(C)/21(b)/29 of the NDPS Act that were read over and explained to them to which they pleaded not guilty. The learned Trial Court on 18.08.2022 explained to them that on 25.05.2021 in a Torja Ber House (house with bamboo wall) situated at Chariali near Railway Line under Digboi Police Station they were found in illegal possession of 10.24 Grms of Heroin and 28.455 Kgs of Ganja and that they used to peddle drugs to others including the other accused persons of the case.

The records reveals that those narcotic substances have been recovered from the said Bamboo wall house from which the petitioners used to do their illegal trade of narcotic substances near Railway Line Chariali under Digboi Police Station and that they are involved in drugs peddling since long. It is found from the records that the petitioners were fully aware of possessing the said narcotic substances in the said bamboo wall hut/house near Railway Line Chariali under Digboi Police

Station from where they were doing the illegal trade of such narcotic substances and police recovered and seized said narcotic substances from their active possession.

The record also reveals that in the said NDPS Case No. 32/2021, the learned Trial Judge has recorded the evidence of four prosecution witnesses up to 31.05.2023 and that they were cross-examined by the defence including the petitioners.

Considering such materials in the case records regarding involvement of the petitioners in the alleged crime, the Court is of the view that this is not a fit case to grant bail to the petitioners, namely, **(1) Sri Saira Begum** and **(2) Sri Fuski Ali**, in said **NDPS Case No. 32/2021** arising out of **Duliajan P.S. Case No. 262/2021**. Accordingly, this bail application of the petitioners, named above, stands rejected.

However, it is clarified that this order of rejection of bail of the petitioners, named above, shall not be considered for the purpose of adjudication of the trial of the said NDPS Case No. 32/2021 against the petitioners.

JUDGE

Comparing Assistant