

GAHC010122992023



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

Case No. : Bail Appln./2006/2023

ANJU DAS
D/O- MR. ANANDA DAS, R/O- POLASHBARI, RONGAMATI, P.S.
POLASHBARI, DIST. KAMRUP, ASSAM

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

Advocate for the Petitioner : MR. Y S MANNAN

Advocate for the Respondent : PP, ASSAM

BEFORE

HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

ORDER

27-06-2023

Heard Mr. Y.S.Mannan, learned counsel for the petitioner and Mr. M.P.Goswami, learned Additional Public Prosecutor, Assam for the State.

By this application filed under Section 439 Cr.P.C., the petitioner, namely, **Anju Das**, is seeking bail in connection with Hatigaon Police Station Case No. 137/2023 registered under Sections 21(c)/29

of the Narcotic Drugs and Psychotropic Substance Act, 1985, corresponding to G.R. Case No. 2474/2023 in which she was arrested on 08.04.2023 and since then she is in custody.

It is contended on behalf of the petitioner that she is pregnant of two months and relying on the amended provisions of Section 439A of the Code of Criminal Procedure (Assam Amendment) Act, 1983, the petitioner being a female is entitled for bail. In support his argument, Mr. Mannan learned counsel for the petitioner also submitted that relating to female arrested accused in NDPS case decided by the Hon'ble High Courts of Manipur at Imphal in Bail Application Nos. 8 and 9 of 2022 decided on 20.08.2022, the Karnataka High Court in its Kalaburagi Bench in Criminal Petition 200107/2021 decided on 29.01.2021 and the Himachal Pradesh High Court at Shimla in Cr No. MP (M) No. 243/2021 decided on 24.07.2021 granted bail to the female accused persons of the case.

Mr. Mannan, learned counsel for the petitioner also placed a decision of this Court passed by a Co-ordinate Bench in BA No. 1115/2023 decided on 12.02.2023 releasing an arrested female accused on bail considering the amended provisions of said 1983 Act.

Perused the provisions of the Code of Criminal Procedure (Assam Amendment) Act, 1983 as well as the decisions cited by the petitioner.

As per the FIR of the case, on the basis of reliable information from their source, police came to know that the companion of the petitioner residing at House No. 57, Namghar Path, Lakhimi Nagar under the jurisdiction of Hatigaon Police Station engaged in illegal trade and drug peddling business in his residence and going to deliver consignment of drugs to someone within the night. On 08.04.2023, the police personnel of Hatigaon Police Station following the due process went to the said address, a three storied apartment having six numbers of flats on it. Police personnel approached the landlady of the house who stays in the second floor and during enquiry, she identified the accused person and told police that the said person is named Babu, who did not submit any document to her while taking rent but she ascertained him on his identity, was found living in one of the flats of the said apartment in the third floor with the petitioner who is from Rangamati, Mirza since last 8 months as her tenant in the said apartment.

The FIR reveals that upon checking the said person introduced himself as Babu but during his enquiry, he could not provide his identity properly and further, on being enquired, he stated that his documents are inside his car parked at down stair. Accordingly, he was sent to take his documents from the car along with two police personnel but the said person taking advantage of darkness

managed to escape, even in a thorough search made in the vicinity, they could not find out him, later his partner i.e. the petitioner revealed that the person who managed to escape and abscond was Rafique Hussain and his rented premises was searched as per the provisions of the NDPS Act with due consent of the petitioner in presence of witnesses including landlady and two of its tenants. During search, six mobile handsets; one Hyundai Tucson Car bearing registration No. AS-01-FH-6780; six numbers of original registration with six different numbers of five different vehicles; Rs. 7,56,180/- in cash; one pass book of Rafique Hussain; 69 Nos. of Plastic soak containers containing suspected brown sugar, total weighing 2881 gms with plastic containers and 861 gms without plastic container and one olive green colour bag were recovered that were seized in presence of witnesses by preparing Seizure Memo.

During the investigation of the case, from the report of the State Transport Department, Kamrup, it was found that the vehicles of all those seized six registration cards belong to said Rafique Hussain with regular interval of huge amounts were credited in the account of said Rafique Hussain by different modes, i.e., cash, electronic transfer etc. and that said Rafique Hussain also transferred the amounts to the accounts of the others.

The case diary reveals that though the petitioner did not marry the co-accused of the case but for the last 8 months, she was living with said Rafique Hussain and police recovered those suspected brown sugar concealing inside the olive green colour bag and cash amount of Rs. 7,56,180/- from the bed room of said Rafique Hussain.

The case diary also reveals that the petitioner was living together with the said accused for the last 8 months at House No. 57, Namghar Path, Lakhimi Nagar wherein the accused hide his name and introduced himself as Babu but it was the petitioner who revealed his name as Rafique Hussain as she stayed with him together for the last 8 months. The recovery of alleged narcotic substances from the house of the accused Rafique Hussain in which she lived along with him for the last 8 months as his partner, it is sufficient to show that she had the knowledge of possession of such narcotic substances in the said house.

The case diary further reveals that said Rafique Hussain is an illegal drug peddler possessing lots of movable and immovable properties and money by means of said illegal trade and that the petitioner accompanied him all along in his said illegal drugs peddling and trade. It is also seen that the investigation is not complete and the FSL report is yet to be received.

From the reading of the said Assam Amendment of the CrPC, 1983 Act or its other amendment provisions, it can be seen that it did not contain any such provisions of the Opium Act, 1857, the Opium Act, 1878 and the Dangerous Drugs Act, 1930 that were prevailed before coming into force of the Narcotic Drugs and Psychotropic Substances Act, 1985 w.e.f. 14.11.1985, following India's obligation under the three United Nations Drug Conventions and in pursuance of Article 47 of the Constitution of India.

Even though the NDPS Act, 1985 that came into force on 14.11.1985, was amended in 1989, 2001, 2014 and 2021, respectively, but the Assam Amendment with regard to CrPC, after the year 1983 was not made and as such, the Court is of the view that with regard to the NDPS Act, the CrPC (Assam Amendment) Act, 1983 is not applicable in the case of the NDPS Act, 1985.

Finding sufficient incriminating materials in the case against the petitioner with regard to her involvement in the alleged crime and considering the fact that the investigation is not yet complete and further one of the main accused of the case, namely, Rafique Hussain @ Babu, who escaped from the clutches of police, is evading arrest, the Court is of the view that the detention of the petitioner in custody since 08.04.2023 cannot be considered at this stage.

Accordingly, this bail application of the petitioner stands rejected.

Return the case diary.

JUDGE

Comparing Assistant