

GAHC010126982023



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

Case No. : Bail Appln./2048/2023

ARCHANA BARMAN
W/O- ARADHAN BARMAN, R/O- BONDA COLONY, POLICE STATION-
NOONMATI, DIST.- KAMRUP (M), ASSAM

VERSUS

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

Advocate for the Petitioner : MR. A TALUKDAR

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

Date : 30.06.2023

- 1.** Heard Mr. D. Kalita, learned counsel for the petitioner. Also heard Mr. R. J. Baruah, learned Additional Public Prosecutor for the State.
- 2.** This is an application filed under section 439 Code of Criminal Procedure, 1973 by the petitioner. Archana Barman seeking bail of her husband, namely, *Aradhan Barman*, who has been detained behind bar since 09.04.2023 in connection with Pragjyotishpur P.S. Case No. 48/2023 under section 20(b)(ii)(C)

of the NDPS Act, 1985.

3. The accusation of this case is that on 08.04.2023 one Manmohan Ch. Roy, SI of Police of Pragjyotishpur Police Station lodged an FIR before the Officer-in-Charge, Pragjyotishpur, inter alia, alleging that on the basis of an information through reliable sources that an illegal business of *Ganja* is going on at Amgaon, Lechubagan Bagan, a search was conducted in the room of one – Azibur Rahman from where 22.225 kgs. Ganja was recovered. Later on, on the basis of information given by Azibur Rahman, another search operation was conducted in the restaurant of the present petitioner from where 720 grams of Ganja was recovered. On receipt of the said FIR, the Pragjyotishpur Police Station Case No. 48/2023 was registered under Section 20(b)(ii)(C) of the NDPS Act and the present petitioner was detained on 09.04.2023.

4. The learned counsel for the petitioner has submitted that though the case which was registered against the present petitioner has been registered under Section 20(b)(ii)(C) for possession of commercial quantity of Ganja. However, the seizure list as well as other materials on record would show that only 720 grams of Ganja was recovered from the possession of present petitioner and, therefore, the case against him ought to have been registered under section 20(b)(ii)(A) of the NDPS Act as the said Ganja was of small quantity. It is also submitted by the learned counsel for the petitioner that the petitioner has been detained the bar since 83 days.

5. On the other hand, the learned Additional Public Prosecutor has submitted that this offence has been committed in an organized manner and the co-accused from whose possession commercial quantity of Ganja was recovered has also implicated the present petitioner, and, hence he objected to grant of bail to the present petitioner.

6. I have perused the statement of the co-accused recorded under Section 161 of the Code of Criminal Procedure and I have also perused the other materials in the case diary, which I am refraining from discussing in detail at this stage as at this point this Court is only considering the prayer for bail of the present petitioner. As apparently, the quantity of Ganja seized from the present petitioner amounts to 720 grams which is a small quantity of Ganja, the case against the present petitioner ought to have been registered under section 20(b)(ii)(A) and not under section 20(b)(ii)(C) of the NDPS Act as has been done in this case.

7. Considering the period of detention and in light of above discussion, this Court is of considered view that further detention of the petitioner is not justified under the facts and circumstances of the case.

8. In view of the above, *Aradhan Barman*, is allowed to go on bail of Rs.20,000/- (Rupees Twenty Thousand) with one surety of like amount to the satisfaction of Special Judge, Kamrup(M) with condition that he shall cooperate with the Investigating Officer of said case and shall not indulge in any offence similar to what he has been accused of in this case.

9. With the above observation, this bail application is disposed of.

JUDGE

Comparing Assistant