

GAHC010145692022



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

Case No. : Bail Appln./1790/2022

SMT. RITA BORO @ NELAMATI BORO
DAUGHTER OF SRI BABURAM BORO, PRESENTLY RESIDING AT-
VILLAGE- NATUNBASTI SANTIPUR, P.S. GARCHUK, DISTRICT-
KAMRUP(M), ASSAM. ADDRESS AT THE TIME OF THE INCIDENT- C/O-
GAUTAM DAS, SON OF SRI SIDHIRAM DAS OF SENMELA, P.S. GARCHUK,
DISTRICT- KAMRUP(M), ASSAM.
PERMANENT ADDRESS- TITKURI MALDHAPARA, MUKTAPUR, P.S.
RANGIA, DISTRICT- KAMRUP(R), ASSAM.

VERSUS

THE STATE OF ASSAM
REP. BY PP, ASSAM.

Advocate for the Petitioner : MR. C K NATH

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE AJIT BORTHAKUR
ORDER

Date : 11.04.2023

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

By this petition under Section 439 Cr.P.C., the accused-petitioner, namely, **Smti. Rita Boro @ Nelamati Boro**, has prayed for grant of bail in connection

with **Special (NDPS) Case No. 206/2021** arising out of **Garchuk P.S. Case No.456/2021** under Section **20(ii)(c)** of the NDPS Act.

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

The accused petitioner has been in judicial custody since 02.11.2021, i.e., 527 days.

The matter relates to recovery and seizure of 43.119 kgs. of suspected cannabis from the possession of the accused petitioner.

Mr. S. Munir, learned counsel for the petitioner, submits that the accused lady has been in judicial custody for 527 days on a false accusation of having possessed 43 Kgs. of ganja. Mr. Munir strenuously submits that the recovery was made from her rented room with one front door in her absence. It is further submitted that although the investigating police officer submitted the charge-sheet on 17.11.2021, but no witness is examined causing inordinate delay in disposal of the case. Mr. Munir also submits that the accused lady being a permanent resident under Rangia P.S., there is no chance of her jumping the course of justice, if released on bail.

Per contra, Mr. R. J. Baruah, learned Addl. Public Prosecutor, submits that a charge under Section 20(b)(ii)(c) of the NDPS Act was framed against the accused petitioner on 15.03.2022, but, thereafter, no prosecution witness is examined. Mr. Boruah further submits that total 43.119 Kgs. of ganja was seized from the rented room of the accused lady, which amounted to commercial quantity and, as such, in view of the bar in Section 37 of the NDPS Act, the bail application of the accused may not be considered favourably.

A perusal of the case record reveals that a charge under Section 20(b)(ii)

(c) of the NDPS Act was framed vide order, dated 15.03.2022 and, thereafter, as many as 17 (seventeen) dates were fixed till 31.03.2023, but not a single witness is examined.

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 9 (nine) has not been able to produce any of them 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. State](#)²¹ 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 (also see Donald Clemmer's 'The Prison Community' 20 National Crime Records Bureau, Prison Statistics in India https://ncrb.gov.in/sites/default/files/PSI-2021/Executive_ncrb_Summary-

2021.pdf 21 1993 Cri LJ 3242 22 Working Papers - Group on Prisons & Borstals - 1966 U.K. published in 194023). 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 under Rangia P.S., 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/- (One Lakh Only)** with one surety of like amount to the satisfaction of the **learned Special Judge (NDPS Act), Kamrup (M) at Guwahati** 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; and

- ii) That the accused petitioner shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Police Officer or the Court; and
- iii) That the accused petitioner shall refrain from committing any similar offences in future, of which he is suspected of commission; and
- iv) That the accused petitioner and her bailor shall produce the Voter Identity Card/Passport/Permanent Residential Certificate, whatever is available at the time of submission of the bail bond for satisfaction of the learned Court below regarding their identity and address and then return the same retaining photocopy thereof on record.

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

Copy of this order be furnished to the learned Addl. Public Prosecutor, Assam and to the Registrar (Vigilance).

This disposes of the bail application.

JUDGE

Comparing Assistant