

GAHC010158982022



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

Case No. : AB/2293/2022

SMT. KABITA DAS
W/O KHAGEN CHANDRA DAS,
WARD NO. 23, KARIMGANJ TOWN,
P.O., P.S. AND DIST.- KARIMGANJ, ASSAM, PIN- 788710.

VERSUS

THE UNION OF INDIA
NARCOTICS CONTROL BUREAU (NCB),
REP. BY STANDING COUNCEL, NCB.

Advocate for the Petitioner : MR H R CHOUDHURY

Advocate for the Respondent : SC, NCB

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN
ORDER

09.01.2023

Heard Mr. H.R. Choudhury, learned counsel for the applicant and Mr. S.C. Keyal, learned Standing Counsel, NCB.

2. Apprehending arrest in connection with the NCB Crime No. 11/2022

under section 8[C] read with sections 21[c]/29 of the NDPS Act, this application under Section 438 of the Code of Criminal Procedure, 1973, is preferred by applicant, namely, Smti Kabita Das for grant of pre-arrest bail.

3. The allegation made in the complaint is that on 09.05.2022, 303 numbers of cartons containing 30,279 bottles of Phensedyl Codeine based Cough Syrup were recovered from one TATA truck bearing registration No. AS-01-CC-8187 and two persons, namely, Kamal Malakar and Suraj Das have been arrested in connection with the same.

4. Mr. Choudhury, learned counsel for the applicant submits that the applicant is the owner of the Truck bearing registration No. AS-01-CC-8187, from where the contraband substances were recovered and that she has sold the said truck to Kamal Malakar on executing an agreement on 03.03.2022, and after 2 months of the date of the said agreement the vehicle was intercepted by NCB with the contraband substances and that the applicant is innocent and she is ready to cooperate with the investigating agency, and therefore, it is contended to allow the petition.

5. On the other hand Mr. Keyal, learned Standing Counsel, NCB has vehemently opposed the petition on the ground that as per statement of the accused Kamal Malakar, he has been working as driver of the said vehicle which is registered in the name of the applicant and he has been paid a sum of Rs. 10,000/- per month as salary. Mr. Keyal further submits that, the seizure list, which is available in the scanned copy of the record, received from the learned court below, reveals that the contraband substances were recovered from the vehicle bearing registration No. As-01-CC-8187 and the same is of commercial

quantity and that though it has been contended on the strength of the agreement dated 03.03.2022, that the vehicle has been sold to Kamal Malakar, the same has not yet been transferred to the name of Kamal Malakar rather the statement of the accused, Kamal Malakar speaks otherwise.

6. Having heard the submission of learned counsel for both the parties, I have carefully gone through the petition and the documents placed on record.

7. It is not in dispute that the seized contraband substance is of commercial quantity and from the materials placed on record and also from the submission of learned counsel for both the parties, it cannot be said that the requirement of section 37 of the NDPS Act is satisfied by the accused. In view of above and also having regards to the nature of accusation and punishment prescribed for the same and also the submission of learned counsel for both the parties, this court is of the view that this is not a fit case where the privilege of pre-arrest bail can be granted to the applicant at this stage.

8. Accordingly the petition stands dismissed.

JUDGE

Comparing Assistant