

GAHC010171572023



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

Case No. : Bail Appln./2755/2023

PUJA RAJBHAR
D/O SRI DIPAK RAJBHAR
R/O HOSPITAL ROAD, BARA BAHERA, P.S. UTTARPARA,
DIST. HOOGLY, WEST BENGAL.

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR S RAHMAN

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

Date : 11.12.2023

- 1)** Heard Mr. S. Rahman, learned counsel for the petitioner. Also heard Mr. B. B. Gogoi, learned Additional Public Prosecutor for the State respondent.
- 2)** This application under Section 439 of the Code of Criminal Procedure, 1973 has been filed by the Petitioner, namely, Mrs. Pooja Rajbhar, who has been

detained behind the bars since 31.10.2022 in connection with NDPS Case No. 39/2023 corresponding to Guwahati GRPS Case No.147/2022 under Section 20(b)(ii)(C)/29 of the NDPS Act, 1985 pending before the Court of learned Additional Sessions Judge No. 2, Kamrup, Metro, Guwahati.

3) The accusation in this case, in brief, is as follows:

i. That on 31.10.2022, one Sri Madan Chandra Kalita had lodged an FIR before the Officer-In-Charge of GRPS, Guwahati, *inter-alia*, alleging that on 31.10.2022, the informant who is an SI of Police was conducting train checking duty at Guwahati Railway Station and while the train number 12423 DN (Rajdhani Express) was standing at Guwahati Railway Station platform no.1, two persons namely, Sandeep Das and Suman Das Adhikari who were travelling in coach number B2 of the said train against seat no. 62 and 70 were found carrying six numbers of bags and on the search of the said bags, 22 numbers of packets containing suspected cannabis (Ganja) were found from their possession. The total weight of the ganja seized from the above-named two persons was found to be 104.26 kg.

ii. It is also alleged in the FIR that two ladies including the present petitioner and one Juma Sinha were also travelling along with the two persons from whose possession the suspected ganja was seized.

iii. On receipt of the aforesaid FIR, Guwahati GRPS case number 147/2022 under Section 20(b)(ii)(C)/29 of the NDPS Act, 1985 was registered and an investigation was initiated. Ultimately, on completion of the investigation, a chargesheet was laid against the present petitioner along with the other three co-accused under Section 20(b)(ii)(C)/29 of the NDPS Act, 1985.

4) Learned counsel for the petitioner has submitted that though no incriminating material was seized from the present petitioner, chargesheet was laid against the present petitioner and charges were framed against the present petitioner under Section 20(b)(ii)(C)/29 of the NDPS Act, 1985 on 08.06.2023 and though the petitioner has been detained behind the bars since 31.10.2022 and she has been languishing in jail since then not even a single prosecution witness has been examined.

5) Learned counsel for the petitioner has also submitted that in the meanwhile, one of the co-accused who was also a lady namely, Juma Sinha and from whose custody also no contraband was seized has already been allowed to go on bail by order dated 03.08.2023 passed in bail application number 2433/2023 by this Court.

6) Learned counsel for the petitioner has submitted that there is no material on record to suggest that the petitioner had criminally conspired or had possessed the seized contraband or had any connivance with the other accused persons in the commission of the offence alleged against her.

7) Learned counsel for the petitioner has also submitted that in the absence of any material against the present petitioner to incriminate her under Section 29 of the NDPS Act, 1985 there is no reasonable ground to believe that she is guilty of the offence under Section 29 of the NDPS Act, 1985 or under section 20(b)(ii)(C) of the NDPS Act, 1985.

8) On the other hand, learned Additional Public Prosecutor has submitted that as the charges are framed against the present petitioner and the framing of charges has not been challenged by the present petitioner, and the charges are framed for the offense involving the commercial quantity of contraband, the embargo of Section 37 of the NDPS Act, 1985 is applicable and hence he has

opposed the grant of bail to the present petitioner.

9) Though the charges, in this case, have been framed against the present petitioner under Section 20(b)(ii)(C)/29 of the NDPS Act, 1985 along with the other three co-accused, however on perusal of the scanned copy of the case record of the NDPS case no. 39/2023 as well as a scanned copy of the case diary of the Guwahati GRPS case no. 147/2022, it appears that no contraband was seized from the possession of the present petitioner, only one mobile phone and a few railway tickets were seized from the present petitioner. It is also alleged in the FIR that it also appears from perusal of the FIR that the only allegation against the present petitioner is that she was traveling with the other two accused persons from whose possession contraband was seized. However, apart from that fact, there is no other material which is there on record to justify that the petitioner, Mrs. Puja Rajbhar, is guilty of offence under Section 29 read with Section 20(b)(ii)(C) of the NDPS Act, 1985 in this case.

10) Hence, from the material on record, for the purpose of consideration of the instant bail application, this Court is satisfied that there are reasonable grounds for believing that the petitioner is not guilty of the offence with which she has been charged in this case. In fact, this Court does not even find sufficient materials on record for presuming that the petitioner has been guilty of the offence of possessing a commercial quantity of ganja or that she has either abetted or is a party to any criminal conspiracy to commit the offence for which charges have been framed against her.

11) Further, there is no material on record to suggest that the petitioner has any criminal incident of being involved in the offense similar to what has been alleged in the instant case. Hence, there is nothing on record to suggest that she may commit any offense if she is released on bail.

12) For the aforesaid reasons, this Court is of the considered opinion that the embargo of Section 37 of the NDPS Act, 1985 does not appear to be applicable in the instant case, in the case of the petitioner Smti Puja Rajbhar. However, it is hereby made clear that the observations made hereinabove are only for the purpose of consideration of the instant bail application and these observations shall have no bearing in any manner in the trial which is pending against the present petitioner.

13) For the reasons stated hereinabove, the petitioner, namely, Smti Puja Rajbhar, is allowed to go on bail of Rs. 50,000/- (Rupees Fifty Thousand only) with two sureties of like amount subject to the satisfaction of the learned Additional Sessions Judge No. 2, Kamrup Metro, with the following conditions that:

i. The petitioner shall, after her release on bail, continue to appear before the learned trial Court, as and when so required by the learned Trial Court, in the trial pending against the present petitioner in NDPS case number 39/2023.

ii. The petitioner shall not leave the jurisdiction of learned trial Court without prior leave of the learned trial Court during the pendency of the trial of NDPS case no. 39/2023.

iii. The petitioner shall provide her contact details, both permanent as well as present address, and shall also furnish photocopies of the Aadhaar Card/Voter Identity Card/Passport/PAN card, whatever is available before the learned trial Court as well as before the Officer-In-Charge of GRPS Guwahati and in case the petitioner is allowed to leave the jurisdiction of learned Trial Court by the trial Court, the leave address of the petitioner,

as well as contact details of the petitioner, shall have to be furnished to the learned Trial Court as well as to the Officer-In-Charge of GRPS Guwahati.

14) With the above observation, this bail application is hereby disposed of.

JUDGE

Comparing Assistant