

GAHC010219012022



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

Case No. : I.A.(Crl.)/664/2022

AGWMA BASUMATARY
S/O LT. NAGEN BASUMATARI, VILL.- NO. 1 DHANSIRIKHUTI, P.S.- ROWTA,
DIST.- UDALGURI.

VERSUS

THE STATE OF ASSAM AND ANR.
REP. BY LD P.P., ASSAM.

2:RITUPAL SAIKIA
S/O ISWAR SAIKAI

S.I OF ROWTA P.S. UDALGURI

Advocate for the Petitioner : MR. A BHATTACHARYA

Advocate for the Respondent : PP, ASSAM

Linked Case : Crl.A./279/2022

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Advocate for : MR. A BHATTACHARYA

Advocate for : PP

ASSAM appearing for THE STATE OF ASSAM AND ANR.

BEFORE
HONOURABLE MR. JUSTICE PARTHIVJYOTI SAIKIA

ORDER

Date : 03-02-2023

Heard Mr. A. Bhattacharya, learned counsel appearing for the applicant as well as Mr. P. Borthakur, learned Additional Public Prosecutor, Assam.

By this application filed under Section 389 (1) CrPC, the petitioner, namely, **Agwma Basumatary** praying for suspension of sentence and for his release on bail.

The petitioner was convicted in 20 (b)(ii)(C) on the NDPS Act and he was sentenced to undergo rigorous imprisonment of 10 years and with fine stipulation.

On 30.08.2021 one sub-inspector of police had searched the house of the appellant which is situated at Dhansirikhuti village under Rowta police station. 20 Kg 100 grams of suspected ganja was recovered from his house.

Subsequently, the said ganja was seized in the police station. The witnesses have stated in their averments that they did not know the appellant.

In support of his submission, Mr. Bhattacharya, learned counsel has relied upon the decision of this Case that was rendered in **Malber Khan and Another Vs. State of Assam** delivered in **Criminal Appeal No. 41/2021**, the para 23 of the said judgement is quoted herein.

*“23. Law is well settled that even in a case coming within the ambit of the NDPS Act, the prosecution would be duty bound to prove the charge beyond reasonable doubt. In the case of **Noor Aga (supra)** the Hon’ble Supreme Court has observed that the initial burden to prove the charge lies upon the prosecution and only when it stand satisfied that the legal burden under section 54 of the Act shift. With a view to bring within its purview the requirement of section 54 of the Act, the element of possession of the contraband has to be established so as to shift the burden on the accused. Similar view has been expressed in the case of **Gangadhar @ Gangaram (supra)** wherein it has been observed that the presumption against the accused of culpability under sections 35 and 54 of the Act to explain possession satisfactorily are rebuttable. It does not dispense with the obligation of the prosecution to prove the charge beyond reasonable doubt.”*

I have considered the evidences available in the record.

This Court is of the opinion that at this stage the petitioner/appellant deserves to be release on bail. Accordingly, the bail application is allowed.

The petitioner, namely, **Agwma Basumatary**, shall be released on bail of Rs.25,000/- with one surety of like amount to the satisfaction of the learned Special Judge cum Station Judge, Udalguri.

It is also directed that this order pertains to the present bail application and it shall not have any effect in the main connected appeal.

The I.A is disposed of.

JUDGE

Comparing Assistant