

GAHC010231712023



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

Case No. : Bail Appln./3720/2023

HASINA BEGUM @ KUMLOSHI YIMCHUNG
W/O MD. FUJEL AHMED
R/O ISLAM NAGAR, WARD NO. 1,
P.S. HOJAI, DIST. NAGAON, ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : G UDDIN

Advocate for the Respondent : PP, ASSAM

**BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA**

ORDER

Date : 21.12.2023

Heard Mr. G. Uddin, learned counsel for the petitioner. Also heard Mr. M. P. Goswami, learned Additional Public Prosecutor for the State respondent.

This is an application under Section 439 of the Code of Criminal Procedure, 1973, praying for grant of bail to the accused/petitioner, who has been arrested on 12.04.2023 in connection with NDPS Case No. 40/2023, arising out of Khatkhathi P.S. Case No. 23/2023 (GR No. 121/23), under Sections 21(c)/29 of the NDPS Act, 1985.

Scanned copy of the LCR has already been received. Perused the same. Heard both sides.

It is submitted by the learned counsel for the petitioner, Mr. Uddin, that the petitioner is innocent and she is no way connected in the alleged offence. It is a fact that she is the owner of the vehicle wherefrom the contraband was recovered by the I.O. during the investigation of the case, but she was not aware about the carrying of any contraband in her vehicle and was also not aware that the other co-accused was involved in such kind of offence. Further she submitted that the petitioner has also 2 (two) minor children who are

seriously ill and there is none to look after them and considering the case in humanitarian ground also, her bail prayer may be considered.

The learned counsel for the petitioner further, stressing on Section 25 of the NDPS Act, submitted that as per the said Section, knowledge has to be there and if any person knowingly permits anyone to commit such offence.

For ready reference, Section 25 of the NDPS Act is extracted hereinbelow:

"25. Punishment for allowing premises, etc., to be used for commission of an offence - Whoever, being the owner or occupier or having the control or use of any house, room, enclosure, space, place, animal or conveyance, knowingly permits it to be used for the commission by any other person of an offence punishable under any provision of this Act, shall be punishable with the punishment provided for that offence."

In this context, the learned counsel for the petitioner also relied on a decision of Hon'ble Apex Court passed in **Criminal Appeal No. 1480 of 2011 (Harbhajan Singh Vs. State of Haryana)**, wherein, it has been considered that Section 25 of the NDPS Act will be attracted only when there is knowledge about commission of the offence.

The learned counsel for the petitioner further submitted that the accused/petitioner is a permanent resident of her addressed locality and there is no chance of absconding if she is enlarged on bail. Rather, she will regularly appear before the Court as and when the date is fixed by the Court. Accordingly, it is prayed for allow the accused/petitioner on bail.

On the other hand, the learned Additional Public Prosecutor, Mr. M. P. Goswami, has submitted that this is a case of commercial quantity and the present accused/petitioner is involved in the alleged offence. She, being the owner of the vehicle, was fully aware about the carrying of the contraband in her vehicle. He further submitted that it is a matter of concern that though her name is Hasina Begum, but she is also known as Kumloshi Yimchung, which otherwise raise reasonable suspicion on the conduct of the accused/petitioner. He further submitted that as the case is under the commercial quantity, rigor of Section 37 NDPS Act will follow and accordingly, submitted that this is not a fit case to allow the accused to go on bail at this stage.

After hearing the submissions made by the learned counsels for both sides, I have perused the case record, Charge-Sheet and the other materials available in the case record.

It is seen that the vehicle of the accused/petitioner was involved in carrying the contraband and from the report of the I.O., it is seen that some secret chambers were made inside the vehicle for the purpose of carrying the contrabands. Further, from the record, it reveals that the case is at the stage of evidence and there is no reasonable ground to believe that the accused is not involved in the alleged offence or she will abstain from doing the same kind of offence in near future which is required under Section 34 of the NDPS Act before passing any order on bail.

In view of above and also considering the nature and gravity of offence, I

find it not a fit case to extend the privilege of bail to the accused/petitioner at this stage and accordingly, the same stands rejected.

In terms of above, this bail application stands disposed of.

JUDGE

Comparing Assistant