

GAHC010257242022



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

Case No. : Bail Appln./3466/2022

MUSSTT NAJAMA BEGUM @ NAJAMA AHMED AND ANR
W/O LATE SALIM AHMED @ CHELIM
R/O BALIJAN KHAN BASTI, BACK SIDE OF 2ND ASRF BATTALION HEAD
QUARTER, P.O AND P.S. KHATKHATI
DIST. KARBI ANGLONG, ASSAM

2: MD. SANJU ALI
S/O MD. JOINAL ALI
R/O SARUPATHAR TOWN

WARD NO. 4
NEAR BMS SCHOOL

P.O. AND P.S. SARUPATHAR

DIST. GOLAGHAT
ASSA

VERSUS

THE STATE OF ASSAM
REP. BY THE PP ASSAM

Advocate for the Petitioner : MR. P P DUTTA

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE AJIT BORTHAKUR

ORDER

01.02.2023

Heard Mr. T.J. Mahanta, learned Sr. Counsel appearing for the accused petitioners as well as Mr. B. B. Gogoi, learned Addl. P.P., Assam appearing for the State respondent.

2. By this second petition under Section 439 Cr.P.C., the accused-petitioners, namely **1. Musstt. Najama Begum @Najama Ahmed and 2. Md. Sanju Ali** have prayed for grant of bail in connection with **NDPS Case No. 46/2022** (corresponding to **Khatkhati P.S. Case No. 35/2022**) pending in the Court of learned Special Judge (NDPS Act), Karbi Anglong, Diphu under Sections **21(c)/29** of the NDPS Act (**G.R. Case No. 74/2022**).

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

4. The brief facts of the case are that on 04.04.2022, one Nitul Saikia, Sub-Inspector of Police, Khatkhati P.S. lodged an FIR stating, *inter-alia*, that on the basis of information received from reliable sources regarding smuggling of huge quantity of suspected narcotic substances from Manipur to Khatkhati, he with his staff and the SDPO, Bokajan conducted search operation in Borlengri area and at about 11.00 a.m., apprehended three accused persons from whom 401.38 gms. of suspected heroin was recovered and seized. During interrogation the arrested accused persons stated that they brought the narcotic substances to supply to the present accused petitioners.

5. Mr. T.J. Mahanta, learned Sr. Counsel appearing for the accused petitioners, submits that the accused petitioners have been languishing in jail for last **303 days** despite being absolutely innocent. Mr. Mahanta further submits that out of the 11

prosecution witnesses 7 have already been examined and none of them has implicated them even remotely. It is submitted that the only evidence is that in the FIR it has been stated that one co-accused, namely Smti. L H Ranirou, during interrogation, stated that she supplied the narcotic substance to the accused petitioners. Mr. Mahanta also submits that such a statement of the co-accused is hit by Section 25 of the Evidence Act and as such, cannot legally be relied on.

6. Mr. B.B. Gogoi, learned Addl. Public Prosecutor, submits that the case record reveals that the investigating officer being yet to be examined in the case, mere fact that no incriminating evidence has come during trial against the accused petitioner, it cannot safely be said that there is absolutely no evidence against him. On the other hand, Mr. Gogoi submits that in view of the bar contained in Section 37 of the NDPS Act, the accused persons cannot be allowed to go on bail without completion of trial in the case.

7. A perusal of the case record reveals that charges under Sections 21(c) read with Section 29 of the NDPS Act were framed on 18.07.2022 and thereafter, 7 prosecution witnesses have so far been examined. There are 4 more prosecution witnesses including the investigating officer to be examined in the case vide the case diary. This Court finds that subject to final outcome on completion of trial of the case, at present, further continuation of detention of the accused petitioners may not be required for the purpose of remaining part of trial.

8. Till now there is no direct evidence of recovery of commercial quantity of contraband suspected to be heroin from the exclusive and conscious possession of the accused petitioners. However, it is yet to be seen whether the offence was committed pursuant to abatement and criminal conspiracy under Section 29 of the NDPS Act.

9. Therefore, this Court is of the considered opinion that if the liberty of bail is granted to the accused petitioners, there is no chance of them hampering the smooth

and speedy disposal of the case and committing similar offences during the period of their bail.

10. Accordingly, upon consideration of the evidence so far recorded during trial and materials on the case diary so far related to the unexamined prosecution witnesses, it is provided that each of the accused petitioners named above shall be released on bail of **Rs.50,000/- (Rupees Fifty Thousand) each** with two sureties of like amount to the satisfaction of the learned **Special Judge (NDPS Act), Karbi Anglong** subject to the following conditions -

- i) That the accused/petitioners 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;
- ii) That the accused/petitioners shall not directly or indirectly make any inducement, threat or promise to the remaining prosecution witnesses so as to dissuade them from disclosing such facts to the Police Officer or the Court;
- iii) That the accused/petitioners shall refrain from committing any similar offences in future of which they are accused or suspected of commission; and
- iv) That the bail bonds submitted by the accused petitioners shall be supported by Voter Identity Card/Passport/Adhaar card etc. so as to ascertain their permanent address to the satisfaction of the learned trial Court. The learned trial Court after verification of any of the aforesaid documents relating to permanent address to its satisfaction shall return the same retaining scanned copy thereof.

Any breach of the above conditions shall render cancellation of the bail in accordance with law.

This disposes of the bail application.

JUDGE

Comparing Assistant