

GAHC020001482023



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

Case No. : Bail Appln./7/2023

SMTI. SENTINARO
W/O RAJU RAI,
R/O OLD SHOWBA VILLAGE, DIMAPUR,
DISTRICT - DIMAPUR, NAGALAND

VERSUS

THE STATE OF NAGALAND
REPRESENTED BY THE PUBLIC PROSECUTOR,
GOVERNMENT OF NAGALAND

Advocate for the Petitioner : ANUNGLA LKR

Advocate for the Respondent : P.P, NAGALAND

**BEFORE
HON'BLE MR JUSTICE MRIDUL KUMAR KALITA**

ORDER

Date : 08-05-2023

Heard Mr. Toshitemjen Pongener, learned counsel for the petitioner, as well as heard Mr. K. Angami, learned Public Prosecutor for the State.

2. This Bail Application has been filed by the petitioner Smt. Sentinaro, who is wife of the accused, Raju Rai under Section

439 CrPC read with Section 37 of NDPS Act, 1985 read with Section 7 of NSR praying for release of accused Raju Rai on bail.

3. The accusation in this case is that on 24.01.2023, one Y. Wilson Patton (ABSI), Narcotic Cell PS. PHQ, Kohima, Nagaland lodged an FIR before the Officer-in-Charge of Narcotic PS, PHQ, Nagaland, Kohima *interalia*, alleging that on the basis of information received through credible sources a search operation was organized on 24.01.2023, at about 0600 hrs, at the residence of accused Mr. Ruokuodilhou Liezetsu and during the search operation about 7 grams of suspected heroin and cash amounting to Rs. 10,110/- (Rupees Ten Thousand One Hundred Ten), few handmade pipes/apparatus used for consumption of drugs, two nos. of country-made pistol of .32 pistol and .22 pistol along with 15 live rounds of .22 was found from his bedroom. On receipt of the said FIR, in Narcotic PS Case No. 003/2023 was registered under Section 21(a)/60 of the NDPS Act, 1985 read with Section 25 (1)(b) of the Arms Act and investigation was initiated. During the course of investigation on the basis of statement recorded under Section 161 CrPC of one co-accused namely Yashikaba, the present accused namely Raju Rai was arrested on 01.02.2023 and since then he has been detained behind bar.

4. The learned counsel for the petitioner has submitted that though Section 27A of the NDPS has been later on added in this case against the present accused, however, the allegation against the accused does not make out the case under Section 27A of the NDPS Act, 1985. He has cited ruling of the Hon'ble Supreme Court in ***State of West Bengal Versus Rakesh Singh*** reported in

MANU/SC/0854/2022 wherein Hon'ble Supreme Court of India has observed as follows:

"8. Fourthly, in so far as the offence under Section 27A of the NDPS Act is concerned, i.e. financing illicit trafficking and harbouring offenders, prima facie we do not find material evidence to support that charge. In our view, being involved in one solitary transaction concerning contraband items will not amount to financing illicit traffic in narcotics. The word "trafficking" connotes continuous flow. There has to be some degree of continuity and regularity in drug dealing before a person can be said to be trafficking in drugs. Similarly, financing illicit traffic would necessarily mean doing so on a regular or continuous basis. It is much more than purchasing or selling contraband items on one occasion. Such a solitary transaction would, in our prima facie opinion, not fall within the mischief of Section 27A of the NDPS Act. In this connection, one may refer to a decision of the Bombay High Court rendered on October 7, 2020 in Criminal Bail Application (Stamp) No. 2386 of 2020 (Reha Chakraborty v. the union of India State of Maharashtra)."

5. The learned Public Prosecutor, Nagaland while vehemently opposing the prayer for bail of the present accused has submitted that there has been a racket of drug trafficking in this case and already 10 (ten) accused persons were arrested in this case out of whom 7 (seven) were granted bail. However, the accused persons who were granted bail have not cooperated in the investigation.

6. I have perused the Case Diary and other materials available on record. On perusal of the Case Diary it appears that the accused, Raju Rai was arrested on 01.02.2023 and he was also remanded to police custody for 4 (four) days. It also appears from the Case Diary that apart from the statement of co-accused, Yashikaba as well as the accused/ Raju Rai himself, recorded under Section 161 CrPC, there is no other credible material on record to show that he has indulged in any activities of financing directly or indirectly, or has indulged in activities prohibited under section 27A, NDPS Act or has

harbored any person involved in aforementioned activities so as to justify invoking of Section 27A in this case.

7. Though the learned Public Prosecutor has vehemently opposed the prayer of bail of the present accused however, considering the fact that the present accused has been behind bar for more than 93 (ninety three) days and no credible material is available on record to implicate him under section 27A of the NDPS Act a mere adding or quoting Section 27A of NDPS Act in the FIR would not in itself make a embargo of Section 37 of the NDPS Act operative in this case.

For reasons aforesaid, this Court is of the considered opinion that for non availability of materials on record to indicate presence of any ingredient of Section 27A of the NDPS Act, against the present accused, at this stage of investigation, the embargo of Section 37 of the NDPS Act shall not operate against him. Therefore, his further detention is not justified in this case at this stage.

8. In view of above the accused, Raju Rai is allowed to go on bail of Rs. 50,000/- (Rupees Fifty Thousand only) with one surety of like amount to the satisfaction of the learned Special Judge, NDPS, Kohima with the following conditions:

- 1) The accused shall appear before the Investigating Officer of this case once in every week for the next four (4) weeks or till the investigation is completed, whichever is earlier and co-operate with the Investigating Officer.
- 2) The accused shall not directly or indirectly make any

inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Investigating Officer or to any Court.

- 3) During the period the accused is enlarged on bail, he shall not indulge himself in any offence similar to what he has been charged with in this case.

9. Let a copy of this order be furnished to the Special Judge, NDPS, Kohima. Send back the Case Diary to the Investigating Officer of this case through the learned Public Prosecutor along with a copy of this order.

This Bail Application is accordingly disposed of.

Sd/-
JUDGE

Comparing Assistant