

**HIGH COURT OF TRIPURA
AGARTALA**

B.A. 33/2024

Eyachin Chowdhury on behalf of accused Nahima Akhtar

....Applicant(s)

Versus

The State of Tripura

....Respondent(s)

For Applicant(s) : Mr. Samrat Kar Bhowmik, Sr. Advocate
Mr. E.L. Darlong, Advocate

For Respondent(s) : Mr. Raju Datta, PP

HON'BLE MR. JUSTICE ARINDAM LODH

Order

31/05/2024

The Sub-Jailor of Sonamura Sub-jail under Sepahijala District, Sonamura Sub-Division is directed to appear before this Court *in-person* by **01:00 p.m. today** with all the relevant registers regarding articles entered into the jail for the last 2(two) months concerning the baby of custody accused, Nahima Akhtar, and the register maintained to provide baby foods to the said baby.

Learned Special Judge, NDPS, Sepahijala District, Sonamura is directed to immediately rush to the Sonamura Sub-jail and bring all the relevant registers relating to supply of baby foods provided to the daughter of U.T.P. Nahima Akhtar during the last 2(two) months.

Later on, this Court has taken up the bail application filed by the applicant Eyachin Chowdhury on behalf of accused Nahima Akhtar for her release on bail who had been arrested in connection with Sonamura PS case No.2024 SNM 003[SPL (NDPS) 26/2024] and who has been in custody for the last 135 days along with her infant baby.

As directed, Sri Subhadeep Saha, learned Chief Judicial Magistrate, Sepahijala, on being nominated by learned Special Judge, NDPS, Sepahijala District, Sonamura has appeared before me alongwith the relevant Registers of Sonamura Sub-Jail and placed the same under sealed envelope before the Court alongwith a seizure Memo. prepared by him.

Smt. Bela Datta, Jailor, Sonamura Sub-Jail has also appeared in-person before the Court as directed.

During interaction with the learned Chief Judicial Magistrate, Sepahijala, he has submitted that the following facts were noted by him during his visit to the Sub-Jail today as per direction of this Court:

- (1) *That he has inspected the Stock-Register, Ration Register, Gate Article Register and Indent Register of the Sub-Jail which disclosed that the baby of accused Nahima Akhtar is being provided with only milk, banana and biscuit. But the Registers did not disclose what category of milk, whether baby food or not and whether prescribed by the Doctor or not is being provided. At some places in the indent it is noted that Everyday Powder milk is being provided to the baby which is strictly not a baby food and rather it is a dairy whitener, used in ordinary household.*
- (2) *That during his interaction with the UTP Nahima Akhtar, learned CJM, Sepahijala has come to learn that she is breastfeeding her baby but instead of being provided with special diet as a lactating mother, she is being provided with ordinary diet, like any other UTP.*
- (3) *On perusal of the Sick-Patient Register of the Sub-Jail learned CJM, Sepahijala has observed that a Doctor occasionally visits the Sub-Jail for health check-up of all the UTPs once or twice in a month, as and when called for. However, no special visit or health check-up of the baby of accused Nahima Akhtar has been arranged in order to find out whether the baby is malnourished or not.*
- (4) *The Sick-Patient Register did not disclose either whether the baby of accused Nahima Akhtar being a child of only two years has been vaccinated regularly or not in order to ascertain whether all the prescribed vaccines as per the immunization schedule of the Health & Family Welfare Department of the State Government has been administered to the baby or not as per schedule and age of the baby.*
- (5) *No special diet plan for the accused Nahima Akhtar being a lactating mother and her child being a two-years old baby has been found to be in place at the Sub-Jail in order to ensure that both the mother and the baby are not malnourished.*

Learned CJM, Sepahijala has also apprised this Court that the Hon'ble Supreme Court in ***R.D. Upadhyay vs. State of Andhra Pradesh & Ors., AIR 2006 SC 1946*** recognized the rights of women prisoners and the children living with

their mothers in jails. While acknowledging some positive steps taken in this regard, the Hon'ble Apex Court noted "*A lot more is required to be done in the States and Union Territories for looking after the interest of the children*" and went on to issue slew of guidelines to ensure holistic development of the children of women prisoners inside the prisons and pregnant prisoners.

It has been further submitted by learned CJM, Sepahijala that the Sonamura Sub-Jail lacks the basic infrastructure and amenities for maintaining the health and nutrition of lactating women prisoners and their children in terms with the directions issued by the Hon'ble Apex Court in the above referred judgment and recommended that if the Court is pleased enough to issue necessary directions to the Secretary, Home(Jail) of the Government of Tripura to implement the directions passed by the Hon'ble Apex Court in the judgment of ***R.D. Upadhyay*** by letter and spirit, then the basic infrastructure may be created for women prisoners and their children inside prisons. Simultaneously, learned CJM, Sepahijala further recommended that the resources available at the disposal of the concerned District Legal Services Authority may also be pressed into service for monitoring of the implementation of the guidelines issued by the Hon'ble Apex Court by visiting the Prisons time to time and verifying whether the necessary infrastructure has been made available or not.

The Jailor, Sonamura Sub-Jail during her submissions has only projected the sorry state of affairs of the Sonamura Sub-Jail as she only pleaded for lack of infrastructure, staff, non-availability of onsite Medical Officer and Pharmacist, etc. at the Sub-Jail and further submitted that several communications made by her to the higher authorities have resulted in vain to improve the situation.

Having considered the submissions and observations of learned CJM, Sepahijala District, Sonamura and also after hearing the Jailor, Sonamura Sub-Jail who are present in-person, it appears to me that *prima facie* the Sonamura Sub-Jail lacks the basic infrastructure and amenities necessary for maintaining the health and well being of accused Nahima Akhtar and her infant baby.

Even though this is a case under NDPS Act, but as per the records of the trial Court, in this case investigation has already concluded and the case is now pending in inquiry. Accused Nahima Akhtar is a resident of Sonamura Sub-Division and she is being lodged at the Sonamura Sub-Jail alongwith her infant baby without proper nutrition and special diet plan. Therefore, having considered the plight of accused Nahima Akhtar and her infant baby currently lodged at Sonamura Sub-

Jail, I am inclined to consider the bail of the accused person purely on humanitarian grounds.

Mr. R. Datta, learned P.P. has prayed that stringent conditions may be imposed while granting bail to the accused considering the nature and gravity of the offence so that the trial of the case is not compromised or hauled up due to any conduct of the accused.

Hence, for the reasons stated and discussed here-in-above, taking it as an exceptional case, I am inclined to release accused Nahima Akhtar on bail.

Accordingly, accused Nahima Akhtar shall be released on bail on her furnishing of a bail bond of Rs.2,00,000/-(Rupees two lakh) each with two sureties of like amount to the satisfaction of learned Special Judge, NDPS, Sepahijala District, Sonamura subject to the following terms and conditions:

- (1) That the accused shall not leave the jurisdiction of the learned trial Court without prior permission.*
- (2) That the accused shall not change her permanent residence and mobile number without giving any prior intimation to the learned trial Court.*
- (3) That the accused shall cooperate with the learned trial Court in order to conclude the trial as early as possible.*
- (4) That the accused shall not commit any similar offence of which she is accused of in this case.*
- (5) That the sureties to be furnished by the accused must be local and permanent residents of Sonamura Sub-Division.*
- (6) That the accused shall take proper care of her baby as per the advice of the Doctor.*

Mr. S. Kar Bhowmik, learned senior counsel has prayed to the Court to pass necessary directions to the learned trial Court to supply soft copies of the prosecution papers as per Section 207 of CrPC in terms with the directions of the Hon'ble Apex Court.

In this regard, it is directed that Mr. Kar Bhowmik, learned senior counsel shall place the relevant judgment of the Hon'ble Apex Court before the learned trial Court and learned trial Court in turn shall pass appropriate order regarding supply of the soft copies of the prosecution papers.

The Secretary, Home(Jail) of the Government of Tripura is directed to take necessary steps immediately for implementation of the guidelines issued by the Hon'ble Apex Court in ***R.D. Upadhyay vs. State of Andhra Pradesh & Ors., AIR***

2006 SC 1946 in all the Prisons of the State for the benefit and welfare of the women prisoners and their children inside the prisons.

The Jailor, Sonamura Sub-Jail is directed to take necessary steps for immediately putting in place the basic minimum infrastructure such as special diet plan, regular medical check-up, vaccination, etc. for all the women prisoners of the sub-jail having accompanied with their infant babies so that no further non-compliance takes place in future as occurred in this case.

At the same time, the Member Secretary, Tripura State Legal Services Authority is directed to take up an exercise in order to evaluate the availability of infrastructure at the Prisons of the State for the women prisoners and their children as per the directions in the above referred judgment and make suitable recommendations to the State Government for creation, augmentation and up-gradation of such infrastructure within one month.

The instant bail application stands allowed with the aforesaid terms and thus disposed.

Let the seized Registers and files of Sonamura Sub-Jail produced before the Court be returned to the Jailor, Sonamura Sub-Jail by the Registry.

Registry is directed to supply a copy of this order to all concerned forthwith.

JUDGE

Snigdha

SAIKAT
KAR

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by SAIKAT KAR
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