

**HIGH COURT OF TRIPURA
AGARTALA**

BA No.76 of 2024

Sri Bappan Das on behalf of Accused Smt. Arati Das
---Appellant(s)

Versus

The State of Tripura
----Respondent(s)

For Appellant(s)	:	Mr. A. K. Pal, Adv.
For Respondent(s)	:	Mr. Raju Datta, P.P. Mr. R. Saha, Addl. P.P.

HON'BLE MR. JUSTICE BISWAJIT PALIT

Order

29/11/2024

This bail application under Section 483 of BNSS, 2023 read with Section 37 of NDPS Act is filed for releasing accused person Smt. Arati Das on bail who is incarceration in jail in connection with Kadamtala PS Case No.2024 KDL 049 under Section 22(c)/25/29 of NDPS Act.

Heard Learned counsel Mr. A. K. Pal representing the accused in custody and also heard Learned P.P. Mr. Raju Datta along with Mr. R. Saha, Learned Addl. P.P. representing on behalf of the State.

Taking part in the hearing Learned counsel for the accused petitioner submitted that the petitioner being a woman, is lodging in jail on and from 01.08.2024. According to Learned counsel no contraband was seized by the I.O. from her possession and simply on the basis of oral statement of co-accused Gopal Nath she has been detaining in custody without any basis and furthermore Learned counsel submitted that the daughter of the accused in custody delivered a child who has been expired recently and there is none to take care of the daughter of the accused in custody. So Learned counsel urged for releasing the accused on bail in any condition for the sake of justice.

On the other hand, Learned P.P. Mr. Raju Datta along with Mr. R. Saha, Learned Addl. P.P. submitted that the investigation of the case is in progress and considering the nature and gravity of the offence at this stage there is no scope to release the accused on bail for the sake of investigation and in support of his contention Learned P.P. relied upon one citation of the Hon'ble Apex Court in **Union of India v. Rattan Malik alias Habul** reported in **(2009) 2 SCC 624** wherein in para Nos.8 and 16, Hon'ble the Apex Court observed as under:

"8. Having carefully gone through the impugned order, we are constrained to observe that while dealing with the application for bail, the learned Judge appears to have lost sight of the mandatory requirements of Section 37 of the NDPS Act and thus, the impugned order is clearly unsustainable.

16. Merely because, according to the learned Judge, nothing was found from the possession of the respondent, it could not be said at this stage that the respondent was not guilty of the offences for which he had been charged and convicted. We find no substance in the argument of learned counsel for the respondent that the observation of the learned Judge to the effect that "nothing has been found from his possession" by itself shows application of mind by the learned Judge tantamounting to "satisfaction" within the meaning of the said provision. It seems that the provisions of the NDPS Act and more particularly Section 37 were not brought to the notice of the learned Judge."

Referring the same Learned P.P. submitted that as submitted by Learned counsel for the accused in custody that nothing was recovered from the possession of accused could not incur any right to the accused in custody to be released on bail.

Learned P.P. further referred another citation in **Union of India through Narcotics Control Bureau, Lucknow v. Md. Nawaz Khan** reported in **(2021) 10 SCC 100** wherein in para No.28 and 29 Hon'ble the Apex Court observed as under:

"28. As regards the finding of the High Court regarding absence of recovery of the contraband from the possession of the respondent, we note that in Union of India v. Rattan Malik, a two-Judge Bench of this Court cancelled the bail of an accused and reversed the finding of the High Court, which had held that as the contraband (heroin) was recovered from a specially made cavity above the cabin of a truck, no contraband was found in the "possession" of the accused. The Court observed that merely making a finding on the possession of the contraband did not fulfil the parameters of Section 37(1)(b) and there was non-application of mind by the High Court.

29. In line with the decision of this Court in Rattan Mallik:(2009) 2 SCC 624, we are of the view that a finding of the absence of possession of the contraband on the person of the respondent by the High Court in the impugned order does not absolve it of the level of scrutiny required under Section 37(1)(b)(ii) of the NDPS Act."

Referring the same Learned P.P. further submitted that absence of possession of the contraband item does not absorb the accused from the liability of a scrutiny required under Section 37(1)(b)(ii) of the NDPS Act. So Learned P.P. finally urged for rejecting the bail application of the accused in custody for the sake of investigation of the case.

Considered.

Herein the case at hand the prosecution was set into motion on the basis of an FIR laid by one SI Tapan Das to OC Kadamtala Police Station, North Tripura District alleging inter alia that on 31.07.2024 at about 1530 hours during mobile duty at Harinacherra he had seen that one rider of red colour Splendar bearing No.TR 05 C 8296 was proceeding towards Piyaracherra from Brajendranagar and there was a plastic bag in the said bike. Accordingly the informant stopped the bike and asked the driver to show the relevant documents. The bike rider was scared and thereafter the informant asked the rider about the articles kept inside the bag. That time he stated that he was carrying prohibited drugs (Yaba tablets). Immediately two independent witness were called at the spot. The person was identified as Gopal Nath of Brajendranagar, P.S. Kadamtala and then he was asked whether he was willing to be searched in presence of a Gazetted Officer. But he refused. So his body was searched in presence of the witnesses Notice under Section 50 of the NDPS Act was served upon him and the pre-search and search memo was prepared in presence of witnesses and then from 30 blue colour packets inside the bag, 5502 nos. small red colour tablets

known as YABA tablets, suspected containing methamphetamine drug approximately 600 gm including plastic pouch weighing in electric weighing machine were recovered and one mobile phone vide Sim Card No.7005673220 (Jio) and 9402380335 (BSNL) and two wheeler motor cycle TR 05C 8296 and along with the tablets were seized in presence of witnesses from his possession and he also prepared a spot inventory of the seized item and in course of interrogation said Gopal Nath admitted his guilt and disclosed that he brought the contraband item from a woman at Brajendranagar and on the basis of his information the women was detained and brought the police station with the help of women police staff and the name of that lady was Arati Das aged about 50 years. Both the arrested persons were brought to the Kadamtala Police Station and hence he laid the FIR. Accordingly the case was registered and the investigation started.

This is the gist of the FIR and on the basis of the FIR the I.O. started conducting investigation of the case and in course of investigation he has collected some materials showing implication of the accused with the alleged crime.

It is the admitted position that the accused in custody is lodging in jail w.e.f. 01.08.2024. From the relevant prosecution papers and considering the materials on record and in view of the principles of law laid down by the Hon'ble Apex court in the aforementioned cases at this stage this court finds no scope to presume the accused to be innocent as provided under Section 37 of NDPS Act.

So considering all, the bail application filed on behalf of the accused in custody stands rejected being devoid of merit. The accused still remain in J/C as before. Return back the CD to the

I.O through Learned P.P. along with a copy of this order for information. Also a copy of this order be communicated to the Learned Special Judge(NDPS), North Tripura, Dharmanagar for information. The I.O. be asked to expedite investigation and to submit report as early as possible to the concerned court.

With this observation this bail application stands disposed of.

JUDGE

**MOUMITA
DATTA**

Moumita

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