

GAHC040002992024



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

Case No. : BA/24/2024

Ansuma Daimary
Son of Bijen Daimary, resident of Village Lalamoni Para, PO Pathakpur PS Majbat,
Udalguri District, Assam 781125

VERSUS

The State of AP
represented by the PP

Advocate for the Petitioner : Subrata Chowdhury

Advocate for the Respondent : P P of AP

BEFORE
HONBLE MR. JUSTICE BUDI HABUNG

ORDER

Date : 03.04.2024

Heard Mr. S. Chowdhury, the learned counsel for the
petitioner and Mr. G. Tado, the learned Additional Public Prosecutor
for the State of Arunachal Pradesh.

2. This is an application under Section 439 of the Cr.P.C, 1973 praying for grant of bail to the accused, Shri Ansuma Daimary, who has been arrested in connected with Bhalukpong P.S. Case No. 01/2024 under Sections 20(c)/25 of the NDPS Act, 1985.

3. The case of the petitioner is that, basing on the FIR lodged by one Shri Jambey Tsering, ASI (P) of Balukpong Police Station, a case was registered being Bhalukpong P.S. Case No. 01/2024 under Sections 20(c)/25 of the NDPS Act, 1985 and the accused, namely, Shri Ansuma Daimary was arrested in connection with the said case on 18.02.2024.

4. By filing this bail application, the applicant is not praying for release of the accused on merit. The prayer for release of the accused in this bail application is exclusively based on health ground. The learned counsel for the petitioner submits that the accused is a chronic patient having both his kidney damaged. At present, the accused is under constant dialysis. He require a dialysis twice a week. The learned counsel further submits that after his arrest, the accused was taken to Apollo Hospital at Udalguri for dialysis as the said facility was not available at Bomdila, and thereafter, the accused was brought back to the judicial custody at Bomdila. It is further submitted that the accused cannot eat or drink on regular basis. Under the circumstance, if the accused is allowed to be kept inside

the jail for a longer period, he will not survive. The learned counsel for the petitioner has produced medical documents showing the health condition of the accused. The recent dialysis flow sheet has also been annexed as Annexure-5 colly, in the petition. The learned counsel for the petitioner further submits that the accused requires new kidney to be transplanted for his survival, for which, his father is ready to donate one kidney.

5. Basing on the above documents, the learned counsel for the petitioner prays for release of the accused on health ground, in order to facilitate his proper treatment outside the jail.

6. While calling for the case diary, this Court by an order dated 05.03.2024, directed the jail authority to forward the report regarding the health condition of the arrested accused.

7. Mr. G. Tado, the learned Additional Public Prosecutor for the State of Arunachal Pradesh has produced case diary and I have perused the same. The report regarding the health condition of the accused has also been forwarded to the Registry of this Court by the In-Charge of UTP Cell at Bomdila and I have also perused the same.

8. As per the record, the accused is involved in financing and transporting the Cannabis. He is also found to be involved in some

other similar NDPS cases involved with huge recovery of substances. And in the instant case 220.74 kgs of Cannabis has been recovered from the possession of the accused persons, which comes under the commercial quantity, punishment, for which, is imprisonment for less than 10 years, or may extent up to 20 years with a fine.

9. As per the report received from the Jail Authority, the Proforma for health screening of the accused was done before lodging the arrested accused into the UTP cell, and during the screening it was found that the accused was suffering from Kidney failure and was under dialysis. Accordingly, on 28.02.2024, when the accused was taken to the General Hospital Bomdila, the doctor referred the accused to the Dialysis Centre at Dirang for further management and on 29.02.2024, the accused underwent dialysis. The record further reveals that vide medical examination report dated 09.03.2024, prepared by the Medical Officer Community Health Center, Dirang also it is reported that the accused is suffering from chronic Kidney disease, which needs weekly maintenance of Haemodialysis. And following the advised, the accused was taken to CHC, Dirang for dialysis on the same day on 09.03.2024 and on 16.03.2024. And it is reported, that on 23.03.2024 and 26.03.2024 the accused was taken to CHC, Dirang for dialysis as the said provision is not available at Bomdila. And the next date for the

dialysis is fixed for 06.04.2024.

10. The report also reveals that even at the time of arrest, during his medical examination, the doctor finding that the accused was Kidney patient has also advised in his remark column that the accused is not fit to be kept in locked-up as he need specialist intervention. The above health report reveals that the accused is a chronic Kidney patient who requires a weekly dialysis and kidney transplantation.

11. Considering the nature and the gravity of offence alleged to have committed by the accused and the materials found against him on record, I am not inclined to grant bail to the accused at this stage. However, considering that the accused is a chronic Kidney patient, for which, he need regular dialysis twice in a week and the he needs to undergo kidney transplantation apart from other health problems that he has, as shown in the medical record; I am of the view that the bail prayer for released of the accused can be considered on health ground in order to facilitate proper treatment. Accordingly, the bail application is allowed on health ground.

12. The accused is directed to be released on bail on execution of bail bond of Rs. 1,00,000/- with two sureties of like amount to the satisfaction of the learned Special Judge, Bomdila subject to the

following conditions;

- 1) That the accused applicant shall make himself available by the investigating officer as and when required;
- 2) That the accused applicant 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/her from disclosing such facts to the Court or to any police officer; and
- 3) That the accused shall report the I.O. of the case once in a month on every first Monday for 3(three) months and thereafter, as and when called by the I.O of the case.
- 4) That the accused shall furnish his present postal address permanent address and contact number before the Court.

With observations made above, this bail application is allowed and disposed of.

JUDGE

Comparing Assistant