

GAHC040003632024



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

Case No. : BA/31/2024

Sabikun Nehar
Wife of Shri Jiyabur Rehman, resident of Latanoi, VTC Kawaimari,
Sub District Samaguri, PO Samaguri, Nagaon District, Assam 782140

VERSUS

The State of AP
represented by the PP of AP

Advocate for the Petitioner : T Lazi

Advocate for the Respondent : P P of AP

BEFORE
HONBLE MR. JUSTICE BUDI HABUNG

ORDER

Date : 04.04.2024

Heard Mr. D. Nime, learned counsel for the applicant. Also heard Ms. L. Hage, learned Additional Public Prosecutor for the State of Arunachal Pradesh.

2. This is an application filed under Section 439 of Cr.P.C, 1973, praying for

release of the accused person, namely, **Shri Jiyabur Rehman**, on bail, who has been arrested by the Itanagar Police in connection with Itanagar P.S. Case No. 270/2022 under Section 21B of the NDPS Act, 1985, arising out of the FIR dated 03.11.2022, lodged by DySP Shri Kengo Dirchi.

3. The case of the petitioner is that based on the written FIR lodged by one Shri Kengo Dirchi; the above Itanagar P.S. Case being Itanagar P.S. Case No. 270/2022 has been registered under Section 21(b) of the NDPS Act, 1985. The accused was arrested in connection with the said Itanagar P.S on 10.08.2023 and since then he is languishing in the judicial custody for about 8(eight) months.

4. Mr. D. Nime, learned counsel for the applicant submits that the co-accused Shri Rajat Ali who is the main accused in the instant case has already been enlarged on bail on 13.12.2023. However, the bail prayer for release of the accused was rejected by the learned Special Judge NDPS Act, Yupia, on the ground that the accused is a habitual offender and he is also found to be involved in some other similar cases. In this regard, the learned counsel for the petitioner relied upon the decision of the Hon'ble Supreme Court in Crl.A./153/2020 arising out of Special Leave Petition (Criminal) No. 9209/2019 (***Prabhakar Tewari vs. State of U.P & Anr.***) wherein it is observed that, ***"the offence alleged no doubt is grave and serious and there are several criminal cases pending against the accused. These factors by themselves cannot be the basis for refusal of prayer for bail"***.

5. The learned counsel for the applicant further submits that in the instant case nothing was recovered from the possession of the present accused. Whatever the contraband substances was seized by the police was recovered from the possession of the co-accused Shri Rajat Ali who is on bail and not from the accused. It is further submitted that on the incident day the accused was asked by his employer to accompany the co-accused Shri Rajat Ali to Itanagar as the co-accused Shri Rajat Ali did not know how to drive the vehicle. However, the main accused Shri Rajat Ali has now been enlarged on bail while the bail prayer of the accused was rejected. Hence, the learned counsel for the petitioner prays for release of the accused on parity.

6. It is further submitted that after completion of investigation, the case has already been charge-sheeted. As such, no further custodial interrogation or remand is required for investigation purpose, nor there is any chance of the accused influencing the witnesses of the case. It is also submitted that the accused is ready to furnish adequate bail and to abide by any conditions to be imposed for his release.

7. The case record as called for has been produced and I have perused the same.

8. Upon hearing the parties and on consideration of the submission made by the learned counsel for the parties and also considering that the case has

already been charge-sheeted and the matter is on the trial stage which is likely to take longer time to be disposed of, and also considering that the co-accused Shri Rajat Ali who is said to be the main accused in the case has already been enlarged on bail on 13.12.2023, I am of the considered view that the bail prayer for release of the accused can also be considered for his release on parity and in order to facilitate the accused to defend his case properly from outside the jail.

9. Accordingly, for the reason stated above, this bail application is allowed. The arrested accused, namely, **Shri Jiyabur Rehman**, is directed to be released on bail on execution of bail bond of Rs. 1,00,000/- (Rupees One lakh) only with two sureties of like amounts one of which should be a resident of Capital Complex to the satisfaction of the **learned Special Judge NDPS Act, Yupia** subject to the following conditions: -

- i) That the accused shall not directly or indirectly make any inducement, threat or promise to any persons, who are acquainted with the facts of the case so as to dissuade him/her from disclosing such facts to the Court.
- ii) That the accused shall regularly appear for trial of the case.
- iii) That the accused shall not involve himself in the similar nature of case during the bail period.

In terms of above, this bail application stands allowed and disposed of.

JUDGE

Comparing Assistant