

GAHC040009402024



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

**Case No. : BA/83/2024**

Smti Lingam Padu  
Wife of Shri Tanyang Riyang, resident of Darka Village, PO and PS Aalo, West Siang  
District, Arunachal Pradesh

VERSUS

The State of Arunachal Pradesh  
represented by the PP of AP

**Advocate for the Petitioner : T T Tara**

**Advocate for the Respondent : P P of AP**

**BEFORE**  
**HONBLE MR. JUSTICE MRIDUL KUMAR KALITA**

**ORDER**

**Date : 21.08.2024**

- 1.** Heard Mr. T. T. Tara, learned counsel for the applicant. Also heard Ms. T. Jini, learned Additional Public Prosecutor for the State.
- 2.** This application under section 439 of the Code of Criminal Procedure, 1973 has been filed by the applicant, namely, Smti Lingam Padu, for release of her husband i.e., accused, Shri Nyamar Riyang on bail, who was arrested on 15.04.2024 in connection with Aalo P. S. Case No. 26/2024 under Section 21(b)/27A of the NDPS

Act, 1985.

**3.** The gist of the accusation in this case is that on 11.04.2024, one Sri Lakhi Mena, SI of Police of Aalo Police Station lodged an FIR before the Officer-in-Charge of Aalo Police Station, *inter-alia*, alleging that on 11.04.2024, on receipt of an information through reliable sources that two persons are about to bring some heroin to Aalo via Pasighat through Aalo, a search team was constituted and a Naka checking was placed at Gabu near Logum Jini village at around 2.00 pm, the search team apprehended two persons, namely, Kento, Ngomdir and Kenli Doke and recovered from their possession in seven separate containers (soap cases) various quantity of heroin. The total recovered heroin weighed about 67.27 grams.

**4.** Learned counsel for the applicant has submitted that the accused is innocent and is not involved in the offence alleged in the FIR.

**5.** He has also submitted that the accused was arrested only on the basis of statement of co-accused who were arrested at the spot and apart from the statement of the co-accused no incriminating materials are there against the accused.

**6.** It is also submitted by learned counsel for the applicant that nothing was recovered from possession of the accused and he has been languishing behind bars for the last 147 days and therefore, he submits that the accused may be allowed to go on bail.

**7.** On the other hand, learned Additional Public Prosecutor has produced the scanned copy of the case diary of Aalo P. S. Case No. 26/2024 and has submitted that the accused is involved in the offence alleged in the FIR and though, he has been detained behind bars for the last 147 days, he has not been cooperating with the Investigating Officer.

**8.** It is also submitted by learned counsel for the applicant that during the course of investigation, one high-ranking Police Officer posted in a different district, has tried to interfere in the investigation, which shows that the accused has links with higher-ups in the police and if he is released on bail, there is every likelihood that he

will interfere in the investigation and on that ground the Additional Public Prosecutor vehemently opposes the release of the accused on bail.

**9.** She also submits that as the case involves offence under Section 27A of the NDPS Act, 1985, the embargo of Section 37 of the NDPS Act, 1985 is also applicable in this case and hence, the accused may not be allowed to release on bail.

**10.** I have considered the submissions made by learned counsel for both the sides and have perused the scanned copy of the case diary of Aalo P. S. Case No. 26/2024, which has been produced by the Additional Public Prosecutor in this case.

**11.** On perusals of the case diary of this case, it appears that nothing was recovered from the possession of the accused and he was arrested about four days after the recovery of contraband from two of the co-accused, namely, Kento, Ngomdir and Kenli Doke.

**12.** It also appears that apart from the statement of the co-accused recorded under Section 67 of the NDPS Act, 1985/161 of the Court of Criminal Procedure, at this stage there is no other material against the accused on record As regards the offence under Section 27A of the NDPS Act, 1985 is concerned, it also appears that with regard to the alleged offence under Section 27A also apart from the statement of the co-accused, at this stage there is nothing against the accused in the case diary.

**13.** It is now settled after the judgment of Apex Court in the case of “**Tofan Singh Vs. State of Tamil Nadu**” reported in **(2021) 4 SCC 1** that the statement of co-accused recorded under Section 67 of the NDPS Act, 1985 cannot be used as an evidence against an accused in a trial of involving an offence under NDPS Act, 1985.

**14.** Moreover, the petitioner has been detained behind the bars for the last 147 days which, in the considered opinion of this Court, is sufficient period during which the Investigating Officer could have collected some evidence, however, nothing is there on record apart from statement of co-accused.

**15.** In view of above discussion, this Court is of considered opinion that the materials in the case diary do not justify further custodial detention of the accused in

this case.

**16.** Hence, the accused, namely, Shri Nyamar Riyang, is allowed to go on bail of Rs. 30,000/- (Rupees Thirty Thousand only) with one surety of like amount subject to the satisfaction of the learned Session Judge, West Siang District. Aalo with the following conditions:

- i. That the accused shall not directly or indirectly make any inducement, threat or promise to any person who may be acquainted with the facts of the case, so as to dissuade such person from disclosing such facts of the case before the Investigating Officer.
- ii. That the accused shall co-operate in the investigation.
- iii. That the accused after release on bail shall appear before the Investigating Officer of Aalo P. S. Case No. 26/2024, as and when required, for the sake of investigation by the Investigating Officer and shall co-operate with the investigation.

**17.** Regarding the allegation of interference by a high ranking Police Officer in the investigation, as recorded in the case diary, the Superintendent of Police of West Siang District is hereby directed to lodge a formal complaint before appropriate departmental authority. On receipt of the said complaint the concerned departmental authority shall consider the complaint and take it to its logical conclusion.

**18.** With the above observation, this bail application is accordingly disposed of.

**19.** Let a copy of this order be furnished to the Superintendent of Police, West Siang District for compliance.

**JUDGE**

**Comparing Assistant**