

GAHC040013042024



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

Case No. : BA/97/2024

Taba Tajik
Son of Taba Talle, a permanent resident of Village Langchung, PO and PS
Sagalee, Papum Pare District, Arunachal Pradesh.

VERSUS

The State of AP
represented by the PP of AP

Advocate for the Petitioner : N Rama, T Rahul, N Kuma, N Kanu

Advocate for the Respondent : P P of AP,

BEFORE
HONOURABLE MR. JUSTICE BUDI HABUNG

ORDER

Date : 03-10-2024

Heard Mr. N. Rama, learned counsel for the petitioner and Ms. L. Hage, learned Addl. PP for the State of Arunachal Pradesh.

By this application filed under section 483 of BNSS, 2023 r/w section 37 of NDPS Act, the petitioner is seeking release of the

accused person Shri Taba Gatung on bail who has been arrested in connection with Itanagar P.S. Case No.133/2024 u/s 21(b)/29 NDPS Act.

The learned counsel for the petitioner submits that based on a FIR lodged by one Shri Samuel Ngupok SI of Police Station Itanagar, the police has registered case being Itanagar P.S. Case No.133/2024 u/s 21(b)/29 NDPS Act against the accused and two others and arrested him on 3.8.2024. Since then the accused have been under custody without being released. The learned counsel for the petitioner submits that the other co-accused namely Mr. Teli Beekham who was arrested along with the present accused has already been enlarged on bail on 23.9.2024 by the learned trial Court. Hence, it is submitted that on parity also the present accused is also entitled to be released on bail. The other ground for seeking bail is that the father of the accused is seriously ill and there is no one to look after and take care of him except the present accused being his only son.

The learned counsel for the petitioner further submits that the maximum punishment prescribed for offence under section 21(b) NDPS Act is with rigorous imprisonment for a term which may extend to ten years and with a fine which may extend to one lakh rupees. The statutory period for submission of the charge-sheet for such offence is 60 days. It is submitted that in the instant case, the accused was arrested on 3.8.2024 and since then 62 days has passed but the police has failed to file charge-sheet into the case till date hence under, section 187 of BNSS, the accused is entitled to be release on bail.

Ms. L. Hage, learned Addl. P.P referring to the Case Diary and the status report of the case has submitted that the case is still under investigation and charge-sheet has not yet been filed as the FSL report is still awaited. She further fairly submits that she is aware that on expiry of 60 days from the date of arrest, if the police fails to charge-sheet into the case, the accused would entitled to be released on bail.

It appears that the accused Taba Gatung was arrested on 3.8.2024 in connection with the above Itanagar P.S. Case 133/2024 u/s 21(b)/29 NDPS Act and although more than 60 days has expired since his arrest, the police has failed to file charge-sheet into the case till date. Under the provision of section 187 of BNSS 2023, the accused would acquire indefeasible right for consideration for his release on default bail, if the Police failed to submit charge-sheet even after expiry of 60 days in the instant case. And the Court has no discretion under such circumstances

In view of the above provision of law; however, without considering the case on merit, the bail prayer of the petitioner is allowed.

The accused Shri Taba Gatung is directed to be released on bail on execution of bail bond of Rs.50,000/-(Rupees fifty thousand) with one surety of the like amount to the satisfaction of the learned Special Judge, NDPS, Yupia with a further condition that;

- (i) the accused shall co-operate and appear before the I.O of the case as and when called.

(ii) He shall not commit offence similar to the offence to which he is accused.

(iii) He shall not directly or indirectly make any inducement or threat to any person who is acquainted with the facts of the case or to any police officers.

With the above, the bail application stands disposed of.

JUDGE

Comparing Assistant