

GAHC040016122023



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

Case No. : BA/123/2023

Tanchung Namsa
S/o Lt. Karma Norbu, R/o Village Boha, P.O/P.S Kalaktang, District West Kameng,
Arunachal Pradesh

VERSUS

THE STATE OF AP
represented by Public Prosecutor.

Advocate for the Petitioner : Adam Tatak

Advocate for the Respondent : P P of AP

BEFORE
HONBLE MRS. JUSTICE MITALI THAKURIA

ORDER

Date : 24.01.2024

Heard Mr. A. Tatak, learned counsel for the petitioner. Also heard Ms. T. Ete, learned Additional Public Prosecutor for the State respondent.

This is an application under Section 439 of the Code of Criminal

Procedure, 1973 praying for grant of bail to the accused who has been arrested in connection with Rupa P.S. Case No. 13/2023, registered under Section 20(C)/25 of the NDPS Act.

Case Diary has been received and I have perused the same.

It is submitted by Mr. A. Tatak, learned counsel for the petitioner, that initially the F.I.R. was lodged against the driver of the vehicle wherefrom the alleged recovery of the cannabis was made by the police. However, during the investigation of the case, the present accused was arrested in connection with this case and since 22.09.2023, the accused is in custody. He further submitted that the accused is innocent and no way involved with the alleged offence. While the application for bail before the learned Court below was rejected vide order dated 20.10.2023, the learned Court below considered the incriminating materials found against the accused in the Case Diary as well as the rigor of Section 37 of NDPS Act. But the present bail application is filed solely on the medical ground of the wife of the accused, who is suffering from Coronary Artery Disease and she needs immediate medical attention and as there is no one to look after his wife and children, the present accused has prayed for bail solely on medical ground. He further submitted that even if the accused is allowed to go on interim bail, he will abide by all the conditions and will appear before the I.O. as and when called for and will co-operate in the investigation of the case as well as the Court.

In this context, the learned Additional Public Prosecutor, Ms. T. Ete, has submitted that there are sufficient incriminating materials against the present accused and there is no reason to believe that he is innocent and will not commit such offence in future. Further he submitted that as the present bail application has been filed on the medical ground of the wife of the accused, who needs immediate medical assistance and considering the humanitarian ground, the Court may consider his bail application and in that case, rigor of Section 37 NDPS Act will not follow. In support of his submission, the learned Additional Public Prosecutor has relied on a decision of Hon'ble Kerala High Court reported in **ILR 2003 KAR 474 (Syed Abdul Ala vs Narcotic Control Bureau)**, wherein the Court granted bail to the accused considering his medical ground and observed that rigor of Section 37 NDPS Act may not follow while considering the bail petition on humanitarian ground.

After hearing the submissions made by the learned counsels for both sides, I have perused the Case Diary and the other relevant documents as submitted by the learned counsel for the petitioner.

On perusal of the Case Diary, it is seen that there are sufficient incriminating materials collected by the I.O. against the present accused showing his direct involvement in the alleged offence and there is no reasonable ground to believe that the accused is innocent or he may not repeat the same kind of offence in near future.

Coming to the medical ground, as submitted by the learned counsel for the petitioner, it is seen that 2 (two) documents have been filed by the petitioner, wherein it is stated that the wife of the accused is suffering from Rhematic Heart Disease and she has been advised for complete rest. But there is no such advice for any immediate operation of the wife of the accused and in the same time, the decision which is cited by the learned Additional Public Prosecutor, it is seen that the health condition of the accused in that case was very serious wherein 90% of the heart block was there and immediate surgery was advised and considering that aspect of the case, the Hon'ble Kerala High Court granted bail to the accused for an interim period. But, here in the instant case, it is seen that the health condition of the wife of the accused is not so serious and I do not find any immediate medical urgency to allow the accused to go on bail only considering the medical ground of his wife.

In view of above, I do not find it a fit case to extend the privilege of bail to the accused and accordingly, the same stands rejected.

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

JUDGE

Comparing Assistant