



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

Case No. : BA/137/2023

Smti Rumi Boruah Hazarika
W/o Shri Balin Hazarika, R/o Vill. Jorhotia, P.O Choraimoria, P.S Boginadi, Distr.
Lakhimpur, Assam

VERSUS

THE STATE OF AP
through the public prosecutor.

Advocate for the Petitioner : Sanjib Gogoi

Advocate for the Respondent : P P of AP

BEFORE
HONBLE MR. JUSTICE KARDAK ETE

ORDER

Date : 05.01.2024

Heard Mr. S. Gogoi, learned counsel for the applicant. Also heard Ms. T. Jini, learned Addl. Public Prosecutor for the State.

2. By filing this application under Section 439 of the Cr.P.C., 1973, the applicant has prayed for grant of bail to the accused person, *Shri Balin Hazarika* in connection with Rupa P.S. Case No. 15/2023, corresponding to

GR (NDPS) Case No. 38/2023, under Sections 20(c)/25 of NDPS Act, 1985, who was arrested on 12.10.2023.

3. The case set up by the prosecution is that on 03.10.2023, an FIR was lodged before the Officer-in-charge, Rupa Police Station alleging, inter-alia, that the informant had received information from reliable sources that one white colored vehicle No. AS-01-BK-7373 (XUV 500) is carrying some suspicious items/goods/cannabis, which is being escorted by vehicle No. AS-01-DV-1112 (Hyundai i10) and both the vehicles are plying towards Rupa. On such information, the informant briefed QRT for further course of action and shared the information with CO, Shergaon, and other sister agencies. Further, the informant had installed 2 barriers near PHC, Shergaon. At about 0925 hrs, both the vehicles were noticed approaching towards them which were stopped for search. But the drivers of the vehicles managed to escape. The vehicles were followed by the informant and his team and found parked on the roadside near Jigaon. The vehicles were searched in front of the Executive Magistrate, Shergaon, and during search of the vehicle, approximately 110 Kgs. of suspected item i.e., Ganja was recovered in a white plastic bags. Thereafter, on the basis of that FIR, the above mentioned Rupa P.S. Case No. 15/2023 corresponding to GR (NDPS) Case No. 38/2023, under Sections 20(c)/25 of NDPS Act, 1985 was registered. The present accused person was arrested on 12.10.2023 from his residence and the other two co-accused were arrested on 03.10.2023.

4. Mr. Gogoi, learned counsel for the applicant submits that the arrest of the accused person is only on the basis of alleged confessional statement of the co-accused which could not have been used against the accused herein.

He submits that the after the arrest of the accused person, he was forwarded only on the basis of alleged confessional statement made by the accused person while they were in police custody, which is not admissible under the law. He further submits that the arrest, search and seizure made by the police without any warrant and authorization are in gross violation of the Sections 41 & 42 of the NDPS Act.

5. Mr. Gogoi, learned counsel, submits that the accused *Shri Balin Hazarika* is not involved in the alleged offence in any manner and no recovery of any contraband has been made. He further submits that the provision of Section 20(c) of NDPS Act is not attracted at all against the accused inasmuch as there is no offence registered against the accused under Section 29 of the NDPS Act. Therefore, he submits that the accused being innocent and the alleged offence under section 20(c) is not attracted against the accused, the accused person *Shri Balin Hazarika* may be released on bail.

6. Mr. Gogoi, learned counsel has placed reliance on the order of the Coordinate Bench, dated 01.12.2023 passed in *Bail Appln./3887/2023* in *Anil Malakar V. The State of Assam* and submits that there is reasonable ground that the accused person is not guilty of the offence under Section 20(c) of NDPS Act and the accused is not likely to commit any offence while on bail.

7. On the other hand, Ms. T. Jini, learned Addl. P.P., while relying on the Case Diary, particularly, the disclosure statement made by the accused to the effect that he had placed an order of 65 Kgs. of contraband cannabis to Dinesh Mushahari (Co-accused) and submits that involvement of the accused person in the alleged offence cannot be ruled out.

8. She submits that though there is no recovery from the accused person

Shri Balin Hazarika, in view of the disclosure statement, same certainly attracts section 20(c) of NDPS Act. Therefore, there is no ground for grant of bail to the accused person and as such the bail application may be rejected.

9. Considered the submissions of the learned counsel for the parties and also perused the Case Diary.

10. On perusal of the disclosure statement made by the accused person *Shri Balin Hazarika*, I find that the accused person had made a categorical disclosure statement of having placed an order of 65 Kgs. of Cannabis from the co-accused. The other co-accused had also made a clear statement indicting the present accused person of having placed the order, for whom, they were carrying the contraband substances. Although, no recovery has been made from the present accused person *Shri Balin Hazarika*, this Court is of the view that, prima facie, there is a conscious possession in view of the disclosure statement made by the accused.

11. Having considered the submission of the learned counsel for the applicant with regard to the admissibility of the statement or confession made by co-accused and while under the custody, this Court is conscious of the proposition of law to that effect, however, at time of consideration for bail, the statement and other materials can be considered as to whether the accused is prima facie involved or not. In the present case, the disclosure statement of the accused clearly reveals that he had placed the order of 65 Kgs. of Cannabis from the co-accused.

12. Having regard to the contention of the learned counsel for the applicant that without any offence under Section 29 of NDPS Act, against the accused, provisions of Section 20(c) of NDPS Act cannot be maintained, this Court is

of the view that it is too tenuous to accept as the offence alleged against the accused prima facie attracts section 20(c) of NDPS Act. It would be strange to say that to attract section 20(c) NDPS Act, section 29 of NDPS Act, which provides punishment for abetment and criminal conspiracy , requires to be added.

13. Having regard to the contention of the learned counsel for the applicant that there are reasonable grounds to believe that the accused is not guilty of such offence and that he is not likely to commit any offence while on bail as provided under section 37 of the NDPS Act, this Court finds the same to be of total misconception on the part of the learned counsel as it is the court's satisfaction that there are reasonable grounds to believe that the accused is not guilty of such offence and that he is not likely to commit any offence while on bail and not the satisfaction of the applicant or his counsel. In the present case, this court is of the firm view that there are rather reasonable grounds for believing that the accused is guilty of offence, of course, prima facie, in view of the disclosure statement made by the accused.

14. On perusal of the order passed by the Coordinate Bench of this Court, as relied by the learned counsel for the applicant, I find that same has been rendered on a different context. Thus, the same is not applicable in the present case.

15. It is an accepted fact that drug menace not only jeopardize the individual's life who involves in drug abuse but also adversely affects his/her family members and Society at large directly or indirectly.

16. In view of the above facts and circumstances, I find that no ground for grant of bail to the accused person is made out. Accordingly, the present

bail application is rejected.

JUDGE

Comparing Assistant