

GAHC010015452024



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

Case No. : Bail Appln./227/2024

ANURAG GOGOI
S/O SRI KALYAN GOGOI
RESIDENT OF G.N.B. ROAD, OPP. GUWAHATI CLUB BUS STOP, GOGOI
TOWER, 5TH FLOOR, P.S. LATASIL, GUWAHATI, DISTRICT - KAMRUP
METRO, ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. A CHAUDHURY

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI

ORDER

Date : 21.02.2024

Heard Mr. B.K. Mahajan, learned counsel for the petitioner and Mr. D. Das, learned Additional Public Prosecutor for the State.

2. This bail application made under **Section 439 Cr.P.C.**, seeking bail

by the accused-petitioner, namely, **Anurag Gogoi**, in connection with **Dispur P.S. Case No. 2277/2023**, registered under Section 21(b)/22(c)/29 of NDPS Act, 1985.

3. The learned counsel for the petitioner submits that the accused/petitioner has been detained in custody since 11.12.2023. It is also submitted that no any narcotic drugs or psychotropic substance was recovered from the possession of the present petitioner. The alleged contraband was recovered from the possession of Digbijoy Navis and Kundan Thakur as per seizure list. The present petitioner was arrested only on the basis of the statement of the co-accused and alleged CDR analysis.

4. The learned counsel for the petitioner also submitted that as per seizure list, seized 33.71 gms of suspected to be cocaine which reveals of under intermediate quantity. The petitioner is the drug abuser. If any offence has been committed by the petitioner which falls under Section 27 of NDPS Act which is bailable in nature. Under such backdrop, learned counsel for the petitioner has prayed to release the accused/petitioner on bail.

5. In support of his submissions, the learned counsel for the petitioner has placed reliance on the following case laws-

(i) Sanjeev Chandra Agarwal & Anr. v. Union of India, reported in (2021) 20 SCC 57.

(ii) State (by NCB) Bengaluru v. Pallulabid Ahmad Arimutta & Anr., reported in (2022) 12 SCC 633.

(iii) Ragini Dwivedi @ Gini @ Rags v. State of Karnataka, reported in 2021 SCC onLine SC 174.

(iv) Moinul Haque v. State of Assam in Bail Application No. 532/2020, order dated 02.03.2020.

(v) Anil Malakar v. State of Assam in Bail Application No. 3887/2023, order dated 01.12.2023.

6. The learned counsel for the petitioner has pointed out that in the case of Ragini Dwivedi(supra), the Hon'ble Supreme Court held as under-

“5. On an application made by the appellant for bail, the Additional City Civil and Sessions Judge, by an order dated 28.09.2020, rejected the aforesaid application, applying the provisions of Section 37 of the NDPS Act and stating that as the total seizure 'from all accused' was 12 gms Cocaine, 55 gms Ganja, 8 ecstasy tablets, 11.5 gms ecstasy tablets and 10 gms MDMA, no bail could be given to the appellant in the present case.

6. The High Court, by the impugned Judgment dated 03.11.2020, relying upon the statement made by B.K. Ravishankar made under Section 67 of the NDPS act, the case diary and the parameters laid down in Section 37 of the NDPS Act, also rejected bail.

8. Though the appellant has been charged with offences under Section 21, 21(c), 27A, 27(b) and 29 of the NDPS Act, prima facie, if at all any offence has been made out, it could only be under Section 27, being the offence of consuming drugs at parties, for which the maximum sentence for consumption of certain drugs under Section 27(a) is one year, and under Section 27(b) is six months.

9. This being the case, it is clear that Section 37 was wrongly invoked by both the Ld. Additional Sessions Judge and by the High Court. With Section 37 out of the way, this is a case in which bail must ensue, as a result of which, we set aside the judgment of the High Court and enlarge the appellant (Ragini Dwivedi @ Gini @ Rags) on bail, subject to the conditions to be imposed by the trial court.”

7. On the other hand, Mr. D. Das, learned Additional Public Prosecutor

for the State has fairly submitted that as per seizure list, 33.71 gms of suspected to be seized cocaine was of intermediate quantity and 11.6 gms of suspected to be seized MDMA was of commercial quantity. He further submits that considering the background of the case, bail may not be granted to the petitioner.

8. I have considered the submissions made by the learned counsel for the parties. I have also perused the case diary.

9. Admittedly, no any contraband items were recovered from the possession of the present petitioner. As it was disclosed by the co-accused that the present petitioner used to purchase drugs from them, the petitioner was arrested. He is a drug addict. This being the position, Section 27 of NDPS Act is attracted here in this case, wherein the maximum sentence for consumption of certain drugs under Section 27(a) is one year and under Section 27(b) is six months.

10. In view of the above legal mandates, Section 37 of NDPS Act is not attracted here in this case.

11. Accordingly, the accused-petitioner, named above, shall be released on bail in connection with **Dispur P.S. Case No. 2277/2023**, registered under Section 21(b)/22(c)/29 of NDPS Act, 1985, on furnishing bail bond of **Rs.1,00,000/-** with **two suitable sureties** of the like amount to the satisfaction of the learned Special Judge (NDPS), Kamrup(M), Guwahati.

12. The direction for bail is further subject to the following conditions that the accused-petitioner:

(a) shall not leave the territorial jurisdiction of learned trial court without prior written permission from him/her.

(b) shall not hamper with the investigation, or tamper with the evidence of the case;

(c) shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer.

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

14. Send back the case diary.

JUDGE

Comparing Assistant