

GAHC010057642024



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

Case No. : Bail Appln./814/2024

WAHENGBAM ROBITA DEVI
W/O DEEPAK SINGH
R/O WAHENGBAM LEIKAI, LAIREMBI MANING.
P.S. IMPHAL WEST,
DIST. IMPHAL, MANIPUR

VERSUS

THE STATE OF ASSAM
TO BE REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. A AHMED

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

ORDER

Date : 07-06-2024

Heard Mr. A. Ahmed, learned counsel for the petitioner Wahengbam Robita Devi, who has filed this application under Section 439 of the Code of Criminal Procedure, 1973 (CrPC for short) with a prayer for bail as she has been behind bars since 10.02.2023 in connection with NDPS Case No. 85/2023 pending in

the learned Court of Additional Sessions Judge No. 2, Kamrup (M).

2. It is submitted on behalf of the petitioner that her personal liberty has been curtailed as she is behind bars for 1 (One) year 4 (Four) months. It is submitted that the petitioner was not found in possession of methamphetamine but the FSL report reveals that methamphetamine was found during chemical examination of the contraband, which was forwarded for forensic examination in connection with this case. If brown sugar was not found in her possession, then the petitioner is liable only for possession of contraband of intermediate quantity and not of commercial quantity. In that case, the petitioner deserves bail.

3. The FIR unfolds that, on a tip off relating to inter-state transportation of huge quantity of contraband from Meghalaya, a search operation was conducted to apprehend the peddlers who were to sell the contraband in Assam. At about 6.45 PM, the Investigating Team received an information that the miscreants have diverted their route and were proceeding towards Azara in a private car bearing registration No. ML-04-D-2599 and the Officer-In-Charge of Azara Police Station was informed and appraised to search the vehicle. After a while, the Investigating Team received information that the miscreants had taken shelter in a rented house at Gorol, New Airport Road at Azara. This team pursued the miscreants and reached the place of occurrence i.e. the house of Saru Boruah and two women were found inside the rented house along with the aforementioned vehicle. On being confronted, the miscreants tried to give misleading answers. A thorough search was conducted as per proper procedure and the contraband was recovered, concealed on the backside of balcony of the rented house.

4. The miscreants identified themselves as Cherly Ryngklem Ryngklam,

Deepak Singh and Wahengbam Robita Devi and Marbiang Pali. The contraband was found in 19 (Nineteen) soap boxes. The total weight of the suspected heroin was found to be 237 grams and the raw materials of brown sugar weighed 843 grams. It is submitted on behalf of the petitioner that the samples were drawn and were sent for chemical analysis. The charge sheet marked as Annexure-3 reveals that one sample tested positive for heroin and the other sample tested positive for methamphetamine.

5. Also heard Mr. B.B. Gogoi, learned Additional Public Prosecutor, Assam for the State respondent, who has raised serious objection stating that at this juncture, this Court cannot delve into the intricacies of the merits of the case relating to the quantity and the characteristics or description of the seized materials.

6. I have given my thoughtful consideration to the submissions at the bar.

7. The inventory reveals that the items which were recovered as led by the petitioner were not confirmed as heroin or brown sugar, but the items were described as suspected heroin or suspected brown sugar. The FSL report reveals that the samples of light brown colour powdery substance and white crystalized colour substances were forwarded for chemical examination, and these were identified as heroin and methamphetamine. The seizure list and the search memo of the Trial Court record reveals that during seizure, brown colour powdery substances and raw materials of brown sugar have been seized in connection with this case.

8. At this juncture, it cannot be decided conclusively that the light brown colour powdery substance is not heroin or the raw material of brown sugar is not the crystalized substance, identified as raw materials of brown sugar. The

forensic report has already been accepted by the trial Court and charges have been framed in connection with this case under Section 21 (C)/29 of the NDPS Act. This case is pending at the stage of evidence. Further the petitioner has also submitted that search was conducted properly as per Section 52A of the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act for short) and the petitioner deserves bail on this ground alone.

9. The order dated 14.02.2023 reflects that the inventory was prepared and samples were drawn. The articles were produced by the Investigating Officer before the Magistrate for certificate, certifying the correctness of the inventory, for taking photographs of the articles and allowing representative samples to be drawn. The representative samples were drawn of the suspected heroin and forwarded for chemical examination. It appears that Section 52A of the NDPS Act was followed. At this juncture, it cannot be decided conclusively that Section 52A of the NDPS Act has been not adhered to.

10. In view of the foregoing discussions, petition with prayer for bail cannot be allowed at this stage. Bail petition stands rejected at this juncture. However, the petitioner is at liberty to apply for bail if trial is protracted or procrastinated by the prosecution or by the Court.

11. In the above terms this Bail Application stands disposed of.

JUDGE

Comparing Assistant