

GAHC010126902024



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

Case No. : Bail Appln./1861/2024

MALA SINGHA
W/O LATE SUDHIR KUMAR SINGHA
PERMANENT RESIDENT OF VILL- SRIBAR SARA
LEIKIA, BO-LALANG PART-II, VTC-LALANG GRANT, P.O. PAILAPOOL, P.S.
LAKHIPUR
DIST. CACHAR, ASSAM, PIN- 788098

VERSUS

UNION OF INDIA
REP BY THE STANDING COUNSEL, DRI

Advocate for the Petitioner : MR A CHOUDHURY
Advocate for the Respondent : SC, DRI

BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA

ORDER

Date : 25.07. 2024

Heard Mr. S. I. Akand, learned counsel for the petitioner and Mr. S.C. Keyal, learned Standing Counsel, appearing on behalf of the Directorate of Revenue Intelligence (DRI.).

This is an application under Section 439 Cr.P.C., filed by the petitioner, namely **Smti Mala Singha**, praying for release on bail, who was arrested on 03.02.2024 in connection with DRI Case No. 22/CL/NDPS/

MORPHINE/DRI/GZU/2023-24 under Sections 8(c)/ 21(c)/ 22(c)/ 23(c) of the NDPS Act, 1985.

Case diary alongwith the status report submitted through the I.O. by the learned Standing Counsel, DIR are received and perused.

Heard both sides.

Mr. Akand, learned counsel for the petitioner has submitted that the petitioner is innocent and she is not involved with the alleged offence. He further submits that the petitioner is falsely implicated in this case. More so, she has been detained in custody for last 173 days and the I.O. has got sufficient time for her interrogation during detention. Mr. Akand, learned counsel for the petitioner has further submitted that there is non-compliance of Section 42(2) of the NDPS Act, which is mandatorily required to be followed. The seizure was also made inside the DRI office. He, further submits that non-compliance of the Section 42(2) of the NDPS Act may be one of the grounds for granting bail. He relied upon the decision of the Hon'ble Apex Court in the case of ***Karnail Singh Vs. State of Haryana***, reported in ***2009 (8) SCC 539*** wherein it has been observed by the Hon'ble Supreme Court that non-compliance of the Section 42 (2) of the NDPS Act and failure to take down the information in writing and sending of report forthwith to the superior authority can be one of the ground for bail. He further relied upon another decision of the Hon'ble Supreme Court in regard to the non-compliance of Section 42(2) of the NDPS Act in the case of ***Kishan Chand Vs. State of Haryana***, reported in ***2013 (2) SCC 502*** and in the case ***Sarija Banu (A) Janarthani alias Janani and another Vs. State through Inspector of Police***, reported in ***2004 (12) SCC 266***. More so, it is further submitted by Mr. Akand, learned counsel for the petitioner that if there is reasonable belief that the petitioner has not committed

the offence, rigour of Section 37 of the NDPS Act may be diluted and he may be released on bail. However, he submitted that there is no direct allegation against the petitioner showing her involvement in the alleged offence and as the petitioner has been behind the bar for a considerable long period, considering the length of detention, she may be enlarged on bail. However, she is ready and willing to cooperate with the investigation.

Mr. S.C. Keyal, learned Standing Counsel, appearing for Directorate of Revenue Intelligence has submitted that there are sufficient incriminating materials against the present petitioner and she is one of the main accused persons in the case. Further, the allegation against the petitioner is of commercial quantity and from the status report received from the I.O. reveals that the investigation is going on and the FSL report has already been received by the prosecution and the charge sheet will be submitted within the statutory period of 180 days. Mr. Keyal further submits that there is compliance of Section 42(2) of the NDPS Act and after getting specific information of transportation of commercial quantity of morphine, which was reduced to writing and the police reached the place of occurrence and started investigation and more so, the accused was also asked for her option at the time of search and seizure and she opted of being searched in presence of a gazetted officer. Mr. Keyal, has further submitted that it is a case of commercial quantity and rigour of section 37 of the NDPS act is also applicable in the present case. He therefore, submits that considering the nature of gravity of alleged offence, the accused is not entitled to bail.

After hearing the submissions of the learned counsel for both the parties, I have perused the case record including the status report of the I.O. which reveals that there is compliance of Section 42(2) of the NDPS Act and in the

meantime, the I.O. has collected sufficient materials against the accused/ petitioner showing her direct involvement in the alleged offence. Further, from the report received from the I.O. it reveals that charge sheet will be filed shortly and the FSL report and other documents have been received by the prosecution. So, considering the gravity of offence and bar under Section 37 of the NDPS Act, I do not find it to be a fit case to release the petitioner on bail at this stage. Accordingly, the prayer for bail is rejected.

The bail application is dismissed.

JUDGE

Comparing Assistant