

GAHC010137462024



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

Case No. : Bail Appln./2026/2024

SMTI. SAIRA BEGUM
(THROUGH HER DAUGHTER), W/O LATE YUNUS ALI, R/O DIGBOI
CHARIALI, RAIL GATE, P.O. AND P.S.-DIGBOI, DIST-TINSUKIA

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

Advocate for the Petitioner : MR D BANERJEE, MS. R DEVI, MS M BOSE

Advocate for the Respondent : PP, ASSAM,

BEFORE
HONOURABLE MR. JUSTICE MANASH RANJAN PATHAK

ORDER

09-09-2024

Heard Mr. D. Banerjee, learned counsel for the petitioner and Mr. K. Baishya, learned Additional Public Prosecutor, Assam for the respondent State.

2. The matter was heard last week on 02.09.2024 and it was fixed today for order.

3. By this application under Section 439 CrPC read with Section 482 CrPC the petitioner, namely, **Smti. Saira Begum**, has prayed for her release on bail in NDPS Case No. 32/2021 under Section 22(C) of the Narcotic Drugs and Psychotropic Substances Act, 1985 arising out

of Duliajan Police Station Case No. 262/2021, presently pending before the Court of the learned Additional Sessions Judge -cum- Special Judge (NDPS), Dibrugarh, wherein she is in custody since 25.05.2021.

4. It is stated that after filing the FIR dated 24.05.2021 relating to said Duliajan PS Case No. 262/2021, as many as 12 (twelve) numbers of persons including the petitioner were arrested in the said case and that police on completion of the investigation of the case, submitted charge sheet against all those 12 (twelve) arrested accused persons in said Duliajan PS Case including the petitioner. Though charge under the NDPS Act has been framed against all those twelve accused persons in the case, but it is submitted that excepting the petitioner and another arrested accused person in the case, other 10 (ten) accused persons of the case have already been released on bail in said NDPS Case No. 32/2021 arising out of said Duliajan PS Case.

5. It is also submitted on behalf of the petitioner that though petitioner preferred bail applications in said NDPS Case No. 32/2021, all were rejected, stating further that even on last 27.06.2023, this Court rejected her bail application in the said case.

6. It is further submitted on behalf of the petitioner that out of 21 numbers of prosecution witnesses named in the charge sheet of said Dibrugarh PS Case, till date only 6 such witnesses have been examined in said NDPS Case No. 32/2021 and 15 more prosecution witnesses are yet to be examined.

7. As she is in custody since 25.05.2021 for more than 3 years 3 months in said NDPS Case No. 32/2021, it is submitted that the petitioner should be considered for bail in said NDPS Case that is pending before the Court of the learned Additional Sessions Judge -cum- Special Judge (NDPS), Dibrugarh stating that she shall comply with all the terms and conditions that may be imposed upon her by the Court, while granting her bail in the case.

8. In support of her case for bail, Mr. Banerjee, learned counsel for the petitioner relied on the decisions of the Hon'ble Supreme Court in the cases of *Hussainara Khatoon and Others -Vs- Home Secretary, State of Bihar*, reported in (1979) 3 SCR 16; *Supreme Court Legal Aid Committee (Representing Undertrial Prisoners) -Vs- Union of India and Others*, reported in (1994) Supp 4 SCR 386; *Satender Kumar Antil -Vs- Central Bureau of Investigation*, reported

in (2022) 10 SCR 351 and *Mohd. Muslim @ Hussain -Vs- State (NCT of Delhi)* reported in (2023) 3 SCR 697.

9. In addition to the above, Mr. Banerjee, learned counsel placed several orders passed by the Hon'ble Apex Court as well as by Co-ordinate Bench of this Court that were passed between February 2020 to July 2024, all relating to NDPS matters, granting bail to under trial prisoners during trial of the case.

10. Mr. K. Baishya, learned Additional Public Prosecutor, Assam however objected in granting bail to the petitioner stating that she is found to be involved in the case in procuring and selling such Psychotropic Substances and distributing such materials through the other accused persons of the case. Mr. Baishya also submitted that once she is released on bail the petitioner will continue such procurement and selling of psychotropic substances from different places and thereby contaminate the society, more particularly, the young children of the society.

11. By order dated 17.07.2024 the court called for the scanned legible copy of the records of said NDPS Case No. 32/2021 along with the statements of the witnesses so far recorded from the Court of the learned Additional Sessions Judge -cum- Special Judge (NDPS), Dibrugarh, which the Registry received.

12. Heard the arguments on behalf of both the parties, including the grounds seeking bail for the petitioner, perused the records of the case and considered the decisions cited on behalf of the petitioner as well as annexed to this petition.

13. It is seen that the petitioner and her son Fuski Ali were arrested on 25.05.2021 in said Duliajan PS Case No. 262/2021 with other accused persons of the case. Charge sheet in said Duliajan PS Case was submitted on 31.07.2021 against the petitioner, her son and ten other accused persons of the case under Sections 20(b)(ii)(C)/20(b)(ii)A/21(a)/21(b)/29 of the NDPS Act.

14. On 18.08.2022 learned Trial Judge framed charge against seven of the accused persons, including the petitioner and on 01.09.2022 against the other five accused persons of the case, all under various provisions of the NDPS Act. It is seen that on 18.08.2022 in said

NDPS Case No. 32/2021 the learned Trial Judge framed charge under Sections 20(b)(ii) (C)/21(b)/29 of the NDPS Act against the petitioner, her son Fuski Ali and one Santanu Bora.

15. Record reveals that after arrest of some of the accused with NDPS materials, i.e. heroin, in said Duliajan PS Case No. 262/2021, those accused persons gave lead to the police that they purchased those material from the petitioner. As such, police on 25.05.2021 visited the house of the petitioner at Digboi Chariali near Forest Office, Digboi wherein they found her, her son Fuski Ali and one Santanu Bora, where said Bora came to the petitioner to purchase NDPS materials for his consumption.

16. On 25.05.2021 police following the provisions of the NDPS Act searched the house of the petitioner and during such search recovered —(i) seventy five numbers of small containers made of plastic containing suspected Heroin in each of those containers, in total suspected Heroin of 10.24 Grams; (ii) One plastic packet containing hundred numbers of empty plastic containers used to fill up with suspected Heroin; (iii) suspected Ganja in sealed cover weighing about 5.225 Kgs wrapped in an old calendar, (iv) suspected Ganja in a corrugated plastic bag weighing about 2.554 Kgs, (v) suspected Ganja weighing about 5.083 Kgs covered by one star cement bag in untie position, (vi) a packet of suspected Ganja covered with khaki colour packing weighing about 7.412 Kgs, (vii) one plastic white colour old carry bag containing suspected Ganja weighing about 4.136 Kgs, in total suspected Ganja of 28.455 Kgs; (viii) two numbers of V-40 injections used for taking drugs, (ix) 376 numbers of Rs.500/- currency notes, in total cash amount of Rs. 1,88,000/- (x) one Vivo 1904 mobile handset of the petitioner and (xi) one Oppo A-31 mobile handset of the accused Santanu Bora. Police following the provisions of the NDPS Act, accordingly, seized those recovered materials.

17. It is also seen that FSL Report dated 12.06.2021 relating to seized material gave positive tests for Heroin with percentage of 74.10 and the other seized material gave positive tests for Cannabis (Ganja).

18. It is seen that evidence of two more seizure witnesses out of three, relating to recovery of Narcotic Drugs and Psychotropic Substances, injections and huge cash amount from the possession of the petitioner are yet to be recorded.

19. For the reasons above and considering the recovery of much more than commercial quantity of Heroin and Cannabis (Ganja) from the possession of the petitioner, the Court is of the opinion that though she is in custody since 25.05.2021, it is not a fit case to release the petitioner on bail in said NDPS Case No. 32/2021 arising out of Duliajan PS Case No. 262/2021, pending before the Court of the learned Additional Sessions Judge -cum- Special Judge (NDPS), Dibrugarh at this stage.

20. This bail application of the petitioner **Smti. Saira Begum** in said NDPS Case No. 32/2021 accordingly stands dismissed at this stage.

21. Before parting with the case, it is to be noted herein that in the earlier order dated 27.06.2023 the Court observed that four Prosecution Witnesses were examined up to 31.05.2023. On perusal of the records it is seen that up to 26.06.2024, six of the Prosecution Witnesses have been examined, i.e., from 31.05.2023 to 26.06.2024, for a period of more than a year, Prosecution have examined only two more witnesses. From the records it is seen that it was fixed on 05.09.2024 for evidence, but prosecution did not examine any of its witnesses and the matter is now fixed on 04.10.2024 for evidence. Further 15 more prosecution witnesses are yet to be examined including two seizure witnesses, noted above, relating to the seizure of NDPS materials from possession of the petitioner on 25.05.2021.

22. Registry shall communicate this order to the learned Additional Sessions Judge -cum- Special Judge (NDPS), Dibrugarh forthwith.

JUDGE

Comparing Assistant