

GAHC010150202024



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

Case No. : Bail Appln./2260/2024

PAVEI SAICHAMIA AND 2 ORS.
S/O JOHANTHAN SAICHAMIA, R/O SARANAMI KHAIKHO, P.O. AND P.S.-
TADUBI, DIST- SENAPATI, MANIPUR

2: AVI @ ANGELA
D/O JOHANTHAN SAICHAMIA
R/O SARANAMI KHAIKHO
P.O. AND P.S.-TADUBI
DIST- SENAPATI
MANIPUR

3: KHAVEI @ VEIO @ LUCKY
S/O SHUSHO
R/O 40 KHAIKHO PAWIMATA GAON
P.O. AND P.S.-TADUBI
DIST- SENAPATI
MANIPU

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

Advocate for the Petitioner : MS. P BHATTACHARYA, P SARMA, MR T GOGOI

Advocate for the Respondent : PP, ASSAM,

**BEFORE
HONOURABLE MR. JUSTICE MANASH RANJAN PATHAK**

ORDER

16-08-2024

Heard Ms. P Bhattacharya, learned counsel for the petitioners and Ms. N Das, learned Additional Public Prosecutor, Assam for the State.

2. The petitioners, namely, (i) **Pavei Saichamia**, son of Jonathan Saichamia; (ii) **Avi @ Angela**, daughter of Jonathan Saichamia and (iii) **Khavai @ Veio @ Lucky**, son of Shusho, all from Tadubi, District-Senapati, Manipur have filled this application on 25.07.2024 under section 483 of the Bharatiya Nagarik Suraksha Sanhita 2023 praying for granting them bail and for their release in NDPS Case No. 88/2022 (GR Case No. 167/2022) arising out of Khatkhati Police Station Case No. 61/2022 under Section 21(c)/24/29 of the NDPS Act 1985, in which they were arrested on 24.07.2022 and in custody since then.

3. It is contended by the petitioners that after completion of investigation of the case police on 31.10.2022 vide No. 70/2022 submitted the chargesheet against them in said Khatkhati PS Case u/S. 21(c)/24/29 of the NDPS Act and the learned Special Judge (NDPS) Karbi Anglong, Diphu on 22.12.2022 framed charge u/S. 21(c)/29 of the NDPS Act. It is stated that after framing of charge against them under the NDPS Act, the prosecution has only adduced evidence of 3 (three) prosecution witnesses till date in said NDPS Case No. 88/2022.

4. Petitioners stated that they are innocent persons and involved in cultivation and no way connected with the said Khatkhati PS Case. It is also stated that the petitioner No.2 is the mother of a minor child of 3 years age and she was earlier granted interim bail on 10/03/2023 in BA No.281/2023 for a period of one month on humanitarian ground due to sickness of her said child that was extended for some more time and on expiry of interim bail, she on 15.07.2023 surrendered before the trial court. Since then, the petitioner No.2 is again in jail custody.

5. It is also stated that the parents and brother of the petitioner Nos.1 and 2, who are brother and sister, met with a road accident in which their mother and brother expired and their father sustained serious injuries and was admitted in hospital for medical treatment. After the death of their mother 2 there is no responsible person in the family of the petitioner No.2 to look

after her said minor son.

6. The petitioners stated that they were not in conscious possession of the narcotic drugs recovered from the vehicle concerned in said Khatkhathi PS Case No. 61/2022 and have been implicated in that Case merely on suspicion. They stated that they are suffering a lot due to their long detention for more than 2 years and also for the delay in trial of the said case. Because of such detention for such a long period it is stated that they could not even defend their case properly before the trial court.

7. Stating the above reasons the petitioners are seeking bail in said NDPS Case No. 88/2022 arising out of Khatkhathi PS Case No. 61/2022 pending before the Court of learned Special Judge (NDPS), Karbi Anglong, Diphu.

8. Perused the records of said NDPS Case No. 88/2022 that was called for by order dated 05.08.2024.

9. It is seen from the records of the case that on 24.06.2022 around 03:00 pm on receipt of specific information from reliable source that some drug peddlers including a woman are coming from Manipur to Assam by light vehicle carrying huge quantity of narcotic drugs for sale, a GD Entry No. 652 dated 24.07.2022 was made in Khatkhathi Police Station and accordingly, information was given to the SDPO, Bokajan immediately. Thereafter an authorized team proceeded to conduct special checking at Rengama Basti under the authority of SDPO, Bokajan. On reaching Rengama Basti near Tiniali from about 3:25 pm a special checking setup was installed at Gautam Basti and Khatkhathi weekly market, Bongrung Basti link road with the help of authorized police personnel from Bokajan Police Station. Around 04:30 pm two vehicles coming from Gautam Basti side were signaled to stop and the drivers of both the vehicles as well as the lady passenger were enquired about their destinations, but they failed to give satisfactory reply. As such the SDPO, Bokajan was accordingly informed who was present at the site. On receiving authorization from the said SDPO, Bokajan; those three persons and their two vehicles were searched in presence of independent witnesses. During such search from the Maruti Suzuki white colour Gypsy vehicle bearing Registration No. NL-07C-5586 that was driven by the petitioner No. 3, a black colour Airbag concealed in the backside of the front seat of the said vehicle was recovered containing 49 (forty-nine) numbers of soap box like plastic containers, each containing one polythene packet, suspected to be narcotic drug and to be heroin, weighing in total 666.28 grams without the plastic box containers. Accordingly, those were seized along with other

materials like the photocopy of the driving license, one Oppo mobile handset with SIM card contact No. 9863842609, one black colour Airbag and the said Maruti Suzuki white colour Gipsy vehicle.

10. It is also seen from the records of the case that on 24.06.2022 while searching the other Maruti Suzuki white colour EECO vehicle bearing Registration No. NL-07CB-2827 in presence of independent witnesses, that was driven by the petitioner No. 1, in which the petitioner No.2 was travelling, a green colour plastic bag that was concealed in the backside of the front seat of the said vehicle was recovered containing 50 (fifty) numbers of soap box like plastic containers each containing one polythene packet with suspected narcotic drug to be heroin, weighing in total 663.96 grams without the plastic box containers and also one black colour Airbag with Rs.48,000/- in cash. Accordingly, those were seized along with other materials like the photocopy of the driving license, one PAN Card, one ADHAR Card, one Plus 6 mobile handset with two SIM cards with contact Nos. 9366297577 & 8798646957 of the petitioner No. 1; one Oppo mobile handset with SIM card bearing contact No. 8798946951 of the petitioner No. 2 and the said Maruti Suzuki white colour EECO vehicle.

11. Record reveals that the petitioners before police admitted that they carried those narcotic drugs recovered from them to be Heroin from Manipur for its sale in Karbi Anglong District and its nearby districts. Case record also reveals that the petitioner No. 2, who is the elder sister of petitioner No. 1 was earlier arrested in Dimapur East PS Case No.254/2019 under Section 22(C) of the NDPS Act. The FIR of said Khatkhathi PS Case No. 61/2022 was filed on 24.07.2022 itself and the petitioners were arrested on the night of said 24.07.2022. From the record it is seen that the FSL Report dated 21.09.2022 of the recovered and seized materials from the petitioners gave positive tests for Heroin containing 59.01% of Heroin.

12. Chargesheet in the case was filed on 31.10.2022 and on 22.12.2022 charge under Sections 22(c)/29 of the NDPS Act against the petitioners were framed by the learned Special Judge (NDPS), Karbi Anglong, Diphu in the NDPS Case No.88/2022 arising out of Khatkhathi PS Case No. 61/2022. Chargesheet dated 31.10.2022 contains the names of five prosecution witnesses. Out of those, three prosecution witnesses have already been examined. In addition to that, another prosecution witness, the concerned Sub-Inspector of Police, who is the informant of said Khatkhathi PS Case, was examined on 28.03.2024 and he was cross examined by the defence on 29.07.2024. It is seen that the Investigating Officer of the case is yet to be

examined.

13. Huge and Commercial quantity of Heroin have been recovered from the possession of the petitioners. FSL Report clearly indicates about it. From the records it is seen that 12.08.2024 is the next date for production and recording of other prosecution witnesses.

14. Pondering the entire aspects of the matter and that it involves with huge amount of narcotic drugs that too Heroin recovered from the possession of the petitioner, the Court is of the view that their detention since 24.07.2022 in said NDPS Case No.88/2022, arising out of Khatkhathi PS Case No. 61/2022 pending before the Court of learned Special Judge (NDPS) Karbi Anglong, Diphu cannot be considered to be a valid and fit ground to grant bail to the petitioners in said NDPS Case No.88/2022.

15. For the reasons above, this bail application of the petitioners, named above in said NDPS Case No.88/2022, stands rejected at the stage.

JUDGE

Comparing Assistant