

GAHC010150992024



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

Case No. : Bail Appln./2368/2024

RUNA BEGUM
W/O JUBEL AHMED, R/O VILL- BAGARSANGAN, P.S.-KARIMGANJ, DIST-
KARIMGANJ, ASSAM, PIN-788709

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

Advocate for the Petitioner : MR SISHIR DUTTA, MR S DUTTA,MS S MOCHAHARI,MR. S DUTTA

Advocate for the Respondent : PP, ASSAM,

BEFORE
HONOURABLE MR. JUSTICE PARTHIVJYOTI SAIKIA

ORDER

Date : 12.08.2024

Heard Mr. S. Dutta, learned Senior Counsel assisted by Mr. S. Dutta, learned counsel for the petitioner. Also heard Mr. D. Das, learned Additional Public Prosecutor for the State of Assam.

2. This is an application under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023, whereby the petitioner Runa Begum, who was arrested in connection with Karimganj P.S. Case No.114/2023, prayed for releasing her on bail. She submitted that she has an infant

baby who has not yet completed 2 years.

3. Fourteen packets containing 10,000 numbers of YABA Tablets, weighing 1000 gram, were recovered from the house of the petitioner.

4. Mr. Dutta has submitted that on a plain reading of the FIR, it is clear that the mandate of Section 42 of the NDPS Act was not complied with. In order to buttress his points, Mr. Dutta has relied upon a judgment of the Calcutta High Court that was delivered in ***Abdul Rakib Vs The State of West Bengal*** CRM (NDPS) 546 of 2023.

5. Paragraph Nos.16, 18, 19 and 22 of the said Judgment are quoted as under:

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- i. Section 42 of the NDPS Act relates to the power of entry, search, seizure and arrest without warrant or authorization. Section 42(1) casts a mandate on the designated officer to record his “reason to believe” with reference to personal knowledge or information received and to take down in writing that any narcotic drug or psychotropic substance in respect of which an offence punishable under the Act has been committed is liable for seizure and is kept concealed in any building, conveyance or enclosed place. The officer must record the reasons for such belief before entering and searching any such building conveyance or place between sunrise and sunset.
- ii. In the present case, the prosecution has submitted that the alleged secret information received by the prosecution was written down vide a General Diary Entry by the Special Task Force which was subsequently intimated to the superior officer. The relevant documents are part of records.
- iii. We are, however, of the view that a mere GDE entry does not amount to due compliance of Section 42(1). The Bombay High Court in *Raju Bhavlal Pawar and Ors. Vs. State of Maharashtra* Bail Application No.568 of 2021 held that an entry taken down in the station diary cannot be treated as information recorded under Section 42(1) of the Act. The court

relied on Rajaram Kadu vs. the State of Maharashtra Bail Application No.2108 of 2016, also a decision of the Bombay High Court, to hold that an entry in the station diary is not due compliance of Section 42(1) of the NDPS Act.

iv. We also rely on Boota Singh (Supra) to come to the conclusion that noncompliance of Section 42 is not permissible in law. We are of the view that the report under Section 42(1) must be in terms of a clear recorded statement in writing by the authorized officer under Section 42(1) and must not be contained in a document which is closed from public view."

6. Mr. Das has submitted that the Charge-sheet has been filed and the case record needs to be gone through.

7. I have considered the submissions made by the learned counsel of both the sides. This Court is of the opinion that there are some technical faults in the said case. However, this Court would not make any comment as to the merit of this case at this stage.

8. Since the petitioner with her infant baby has already completed more than 500 days of judicial custody, therefore the petitioner Runa Begum shall be allowed to go on bail of Rs. 50,000/- with 2(two) sureties of like amount with the satisfaction of the Trial Court.

9. With the aforesaid direction, the present bail application stands disposed of.

JUDGE

Comparing Assistant