

GAHC010153812024



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

Case No. : Bail Appln./2244/2024

HAMIDA BEGUM
W/O ABUL KALAM AZAD,
VILLAGE CHATLA, PO CHATLA, PS SARTHEBARI, DIST BARPETA, ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY PP ASSAM

Advocate for the Petitioner : MD. S ISLAM, MR. M DEKA, MISS. M DAS

Advocate for the Respondent : PP, ASSAM,

BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI

ORDER

Date : 11.09.2024

Heard Md. S. Islam, learned counsel for the accused-petitioner as well as Mr. B.B. Gogoi, learned Additional Public Prosecutor for the State.

2. By this second petition filed under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023, the petitioner, namely, **Hamida**

Begum, has prayed for granting bail in connection with **Sarthebari P.S. Case No. 63/2024** under Section 22(C)/29 of NDPS Act.

3. It is submitted by learned counsel for the petitioner that the petitioner is a married woman having three children and her husband was dealing with the business of trafficking of drugs. It is also submitted that the petitioner is innocent and her husband was also arrested in connection with this case. It is further submitted that the petitioner has been languishing in judicial custody for last four months. Though charge-sheet has been submitted, charge has not yet been framed. Considering the length of detention as well as womanhood, the learned counsel has prayed that the petitioner may be enlarged on bail.

4. On the other hand, Mr. Gogoi, learned Additional Public Prosecutor for the State has raised strong objection in granting bail to the petitioner by stating that commercial quantity of contraband was recovered from the house of the petitioner when she was present. It is also submitted that charge has not yet been framed and no any witness has been examined. At this stage, he has prayed that bail may not be considered to the petitioner.

5. I have considered the submissions of learned counsel for the parties. I have also perused the trial court record.

6. It appears that commercial quantity of contraband was found in the house of the petitioner when she was present. It also appears that charge-sheet has been laid under Section 22(C)/29 of NDPS Act and

charge has not been framed. It is too early to consider the bail prayer of the petitioner involving commercial quantity of narcotic drugs.

7. The NDPS Act is a special Act with an inbuilt mechanism in the form of Section 37 relating to bail. The commercial quantity of contraband was kept inside the house of the petitioner.

8. The Hon'ble Supreme Court in the case of ***Chandrakeshwar Prasad Vs. State of Bihar***, reported in ***(2016) 9 SCC 443***, has laid down in clear terms that interest of the society is a relevant factor to be taken into account while considering the prayer for bail. For ready reference, the relevant paragraphs of the said case are extracted herein below:

"10. This Court in Rajesh Ranjan Yadav @ Pappu Yadav v. CBI through its Director (2007) 1 SCC 70 balanced the fundamental right to individual liberty with the interest of the society in the following terms in paragraph 16 thereof:

"We are of the opinion that while it is true that Article 21 is of great importance because it enshrines the fundamental right to individual liberty, but at the same time a balance has to be struck between the right to individual liberty and the interest of society. No right can be absolute, and reasonable restrictions can be placed on them. While it is true that one of the considerations in deciding whether to grant bail to an accused or not is whether he has been in jail for a long time, the court has also to take into consideration other facts and circumstances, such as the interest of the society."

9. On consideration of the matter in its entirety, this Court is not inclined to grant of bail to the accused/petitioner, at this stage. Therefore, prayer for bail is **rejected**.

10. The bail application stands disposed of.

JUDGE

Comparing Assistant