

GAHC010229872023



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

Case No. : Bail Appln./3698/2023

MARBIANG PALI
D/O LATE WAT LAMARE
R/O VILL-LONGBA, PS. JUYAI
DIST JAINTIA HILLS, MEGHALAYA

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. D SARMAH

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

ORDER

Date : 10-01-2024

- 1.** Heard Mr. D. Sarmah, learned counsel for the petitioner "X".
- 2.** The petitioner has filed this application under Section 439 Cr.PC with prayer for bail as she is behind bars since 10.02.2023 in connection with NDPS Case No. 85/2023 arising out of Garchuk P.S. Case No. 35/2023 registered u/s 21(c)/29 of the NDPS Act, 1985.

3. Heard Mr. B.B. Gogoi, learned Addl. PP, Assam.

4. It is submitted on behalf of the petitioner that the petitioner is an HIV patient. Seen the health status report forwarded from the jail dated 18.12.2023 which clearly reflects that the petitioner is an HIV patient and she is also suffering from Tuberculosis. The petitioner has relied on the decision of Hon'ble the Supreme Court in ***Bhawani Singh v. State of Rajasthan*** in Special Leave Appeal (Criminal) No. 2225/2022 wherein vide order dated 11.04.2022 the petitioner was granted bail as he was suffering from HIV and was immunocompromised. The petitioner has relied on the decision of the High Court of judicature at Meghalaya in B.A. No. 38 of 2023 wherein vide order dated 29.09.2023 the petitioner was granted bail after observing that:-

“4. It is also trite law that in cases involving narcotic drugs and psychotropic substances especially involving seizure of commercial quantity of such contraband, the rigours of Section 37 are to be complied with and are also applicable to the case of the accused person herein. On the other hand, there are also provisions even for this Court to take refuge to the provision of Article 21 to say that life and liberty of a person is equally important. As the case referred to by the learned counsel for the petitioner, that is, the case of *Bhawani Singh v. State of Rajasthan: 2022 SCC Online SC 1991* has demonstrated this aspect of the matter wherein the Hon'ble Supreme Court in a case for application of bail taking note of the fact that the accused person involved therein is suffering from HIV, had, on this premise granted bail.

5. As observed herein above, the accused person is indeed suffering from HIV irrespective of the fact that the treatment given by the State may be adequate or not as the case may be, this Court is of the considered opinion that special consideration be given to the accused to get proper treatment or to recuperate from her suffering in an environment congenial to her. Needless to say, grant of bail is not the end of the matter, it is only to ensure that the accused shall not abscond. If the accused person would cooperate with the investigation and the trial, the purpose of the criminal proceedings would be served.”

5. The learned Addl. P.P. has raised serious objection stating that charges have not been framed but charge-sheet has been laid against the present petitioner u/s 21(c)/29 of the NDPS Act. It is also submitted that there are other 40 to 50 HIV

patients lodged in the jail and they are provided requisite treatment in the jail and good care is taken by the correctional home authorities. Considering the rigours of Section 37 of the NDPS Act, bail petition is to be rejected.

6. I have considered the submissions at the Bar with circumspection. The health status report of the petitioner clearly reveals that the petitioner is immunocompromised and she is an HIV patient who is also suffering from Tuberculosis. She is prone to infection as she is immunocompromised. She is lodged in the jail with several inmates. I have also considered the submission that trial has not commenced. The petitioner was behind bars since 10.02.2023. Charge-sheet has been laid against the petitioner but charge has not been framed and trial has not yet commenced. I have also relied on the decision of Hon'ble the Supreme Court in Bhawani Singh's case. It is indeed trite law that in cases involving NDPS Act, especially involving in seizure of commercial quantity of contraband the rigours of Article 37 are to be complied with. On the other hand, there are indeed provisions of Article 21 of the Constitution of India to say that life and liberty of a person are equally important.

7. Considering all aspects and in the light of the decision of Hon'ble the Supreme Court in Bhawani Singh's case, I deem it proper to grant bail to the petitioner. The petitioner is enlarged on bail of Rs. 1,00,000/- with 2 local sureties of like amount to the satisfaction of the Additional Sessions Judge No. 2, Kamrup (M) under the conditions that:-

- i. The petitioner shall not jump the bail;
- ii. the petitioner shall not tamper with the evidence; and
- iii. the petitioner shall cooperate with the trial.

On breach of any of the bail conditions, bail order shall stand cancelled.

JUDGE

Comparing Assistant