

GAHC010242552023



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

Case No. : Bail Appln./4084/2023

BOICHY KUKI @ HESHY
DAUGHTER OF LT. SOTHANG KUKI, RESIDENT OF- VILL- HENJOL, P.S
CHURACHADPUR, IN THE DISTRICT OF CHURACHADPUR, MANIPUR.

VERSUS

THE STATE OF ASSAM
(REPRESENTED BY THE PUBLIC PROSECUTOR)

Advocate for the Petitioner : MR. N N JHA
Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI

ORDER

02.04.2024

Heard Mr. N. N. Jha, learned counsel for the accused petitioner. Also heard Mr. B. Sarma, learned Addl. Public Prosecutor, Assam appearing for the State respondent.

By this petition under Section 439 Cr.P.C., the accused petitioner, namely **Miss Boichy Kuki @ Heshy** has prayed for grant of bail in connection with **N.D.P.S. Case No.44/2021** under Section **21(C)/22(C)/29** of the N.D.P.S. Act.

The brief fact of the case is that on 05.06.2021 on receipt of an information that two drug

peddlers were coming in a scooty bearing No. AS01 DL4406 to Palashbari town to deliver huge amount of contraband, accordingly, at around 6.30 am naka checking was set up at Bongra and other places. However, the peddlers managed to escape from the place. However, they were traced out at Basista Chariali and their scooty was seized. On being interrogated, they led to their rented house at Maighuli under Pilingkata OP (Meghalaya). On being searched 96,350/- numbers of YABA tablets containing methamphetamine weighing about 10 kg 274 grams were detected and seized. Thereafter, the shop of both the peddlers namely, Boicy Kuki @ Hesi and Kimboi Kuki were also searched. During search 125 packets of suspected heroin/brown sugar kept in soap boxes and hidden in a carton were recovered and seized. The suspected brown sugar was weighing about 1kg 700 grams. Accordingly, Acase was registered vide Palashbari PS Case No. 379/2021 and the petitioner was arrested.

Learned counsel for the petitioner has submitted that the charge-sheet has been laid against the accused/petitioner and two other co-accused, Kimboi Kuki and Lunkholal Mate. Except the present petitioner, two other co-accused were granted bail by the trial court. It is further submitted that nothing was recovered from the possession of the accused petitioner as such there was no signature of the accused petitioner was taken in the alleged seizure list and no copy of the seizure list has been furnished to the accused persons which goes to show that no contraband items were recovered from their possession.

It is also the submission of learned counsel for the petitioner that there was gross violation of Section 42(1) and 42(2) of the NDPS Act. Though the information received by officer in-charge of Palashbari Police Station, that was not reduced into writing and the same was admitted by the said witness during cross-examination. In the FIR, it has not been mentioned the time of receipt of the secret information. It is also admitted by PW-1 in his cross-examination that the same seal was used in every case. It is further admitted by the said witness that detail report of search, seizure and arrest was not given to superior officer within 48 hours under Section 57 of the NDPS Act and thus, violating the said Section of law.

The learned counsel for the petitioner also has submitted that PW-1 also admitted that the inventory under Section 52(A) was not prepared which is mandatory in nature and thus violated the Apex Court's observation in *Mohanlal* case. Under such backdrop, as the accused/petitioner cannot be convicted on violation of the aforesaid provisions of NDPS Act,

there is no reason to detain the accused petitioner in jail for further more period.

The learned counsel for the petitioner also has pointed out that out of 16 witnesses, only 2 witnesses have been examined. The petitioner has been detained in custody for about three years and it is not likely to dispose of the matter very soon. Considering the length of detention and the background of the case, the petitioner may be enlarged on bail.

In support of his submission, the learned counsel for the petitioner has relied on the following case laws:

- (i) *Man Mandal and another Vs the State of West Bengal* reported in *Special leave to appeal (Crl. No. 8656/2023)*.
- (ii) *Sariful Islam vs State of West Bengal* reported in *Special Leave to appeal (Crl.) I.A. No. 66709/2022*.
- (iii) *BA 2691/2023 (Sahabuddin Kazi vs State of Assam)*.

On the other hand, Mr. B. Sarma, learned Additional Public Prosecutor submits that commercial quantity of narcotic substances were recovered from the house of the petitioner but he has admitted that out of 16 witnesses only 2 witnesses have been examined by the prosecution side during last three years. However, learned Additional Public Prosecutor has prayed not to release the accused petitioner on bail at this stage of trial.

The trial court record shows that the petitioner has been detained in custody since 06.06.2021. The other two co-accused were granted bail by the trial court. It is not reflected from the case record why the bail application of the present petitioner was not considered by the trial court. It also appears from the case record that charge was framed on 17.11.2021 but the prosecution has failed to complete the trial within three years without showing any reasonable ground.

In view of the fact that as the two co-accused have been granted bail by the trial court on the same set of accusation, there is no justification to detain the present petitioner in connection with the alleged offence. Hence, bail is granted.

Accordingly, it is provided that the accused petitioner, named above, shall be released on bail of **Rs.1,00,000/- (Rupees One Lakh) only with two**

suitable sureties each of the like amount out of which one of the surity should be a Government employee, to the satisfaction of the learned **Special Judge (NDPS), Kamrup, Amingaon.**

The direction for bail is further subject to the condition that the accused-petitioner:

(a) shall not leave the territorial jurisdiction of learned Special Judge, Kamrup, Amingaon, without prior written permission from him/her;

The learned Special Judge, Kamrup, Amingaon is at liberty to impose any condition(s) as it deems fit and proper at the time of releasing the accused/petitioner on bail to procure her attendance during trial.

The observation made above, shall confine for the purpose of disposal of this bail application only and shall not in any way affect the proceeding of the trial.

However, trial court is directed to take initiative to dispose of the matter early.

In terms of the above, this bail application stands disposed of.

JUDGE

Comparing Assistant