

GAHC010255782024



undefined

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

Case No. : Bail Appln./3694/2024

SMTI MANJURA KHATUN
W/O SRI SORHAB ALI
VILL- DOLAIGAON PART-III
P.O. AND P.S. BONGAIGOAN,
DIST. BONGAIGAON, ASSAM

VERSUS

THE STATE OF ASSAM
REP BY THE PP, ASSAM

Advocate for the Petitioner : MR. D A KAIYUM, MR. M S MONDAL

Advocate for the Respondent : PP, ASSAM,

BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI

ORDER

Date : 19.12.2024

Heard Mr. D.A. Kaiyum, learned counsel for the petitioner. Also heard Mr. K. Baishya, learned Additional Public Prosecutor for the State.

2. This is the third bail application made under Section 483 of the Bharatiya Nagarik Suraskha Sanhita, 2023, the accused petitioner namely, **Smti. Manjura Khatun**, has prayed for bail in connection with Special (Nar) Case No. 76(BGN)/2023 (arising out of Bongaigaon P.S. Case No. 10/2023) under Section 20(ii)(C) of NDPS Act r/w Section 4 of Assam Ganja and Bhang Prohibition Act, 1958.

3. The brief fact of the case is that on 04.01.2023 at about 6 p.m. on receipt a reliable information from a source that one Sorhab Ali and his wife Manjura Khatun of Dolaigaon Part III, Bongaigaon have involved in illicit trafficking of narcotic substances from their house, accordingly, the police personnel proceeded to the place and raided the house of Sorhab Ali and apprehended the accused petitioner. During search, 22.071 kg of ganja was seized. Thereafter, a case was registered against the petitioner.

4. The learned counsel for the petitioner submits that the accused/petitioner has been detained in custody with her minor child since 04.01.2023. It is also submitted that after completion of investigation, charge sheet was submitted vide C.S. No. 139/2023 dated 30.05.2023 under Section 20(ii)(C) of NDPS Act r/w Section 4 of Assam Ganja and Bhang Prohibition Act, 1958 against the petitioner and her husband and charge was framed on 13.10.2023. It is further submitted that out of 7 witnesses, 5 witnesses have been examined.

5. It is further submitted that while rejecting the bail application on 04.01.2024, this Court directed the learned trial court to dispose of the matter at the earliest, preferably by conducting day-to-day hearing

within three to four months. The petitioner was arrested solely based on suspicion, without any involvement in the present case. It is also stated that the seized ganja was recovered from a nearby abandoned house belonging to the petitioner, and nothing was recovered from the conscious possession of the accused petitioner.

6. During trial of the case, no substantive evidence has been found against the petitioner to establish the case under Section 20(ii) (C) of NDPS Act and Section 4 of Assam Ganja and Bhang Prohibition Act, 1958. As such, further detention of the accused petitioner is not justified and amounts to violation of personal liberty guaranteed under Article 21 of Constitution of India.

In support of his submission, learned counsel for the petitioner has placed reliance on a case law- Sheikh Javed Iqbal @ Ashfaq Ansari @ Javed Ansari v. State of Uttar Pradesh, reported in Criminal Appeal No. 2790/2024.

7. On the other hand, Mr. Baishya, learned Additional Public Prosecutor for the State has vehemently opposed in granting bail to the petitioner on the ground that commercial quantity of ganja was recovered from the house of the petitioner and she is directly involved in the alleged offence. It is also submitted that out of seven witnesses, five witnesses have already been examined and there is no delay in proceeding of the case. Considering the background of the case, bail may not be granted to the petitioner at this stage of trial.

8. I have considered the submissions made by the learned

counsel for the parties. I have also perused the scanned copy of trial court record and evidence of the witnesses.

9. It appears from the record that the accused has been detained in custody since 04.01.2023. Charge was framed on 13.10.2023. It also appears that out of seven witnesses, five witnesses have been examined. It transpires that the trial is progressing. It is to be noted that the witnesses examined by the prosecution have indentified the petitioner in the court from whose house the contraband item was recovered.

10. It is well settled by Hon'ble Supreme Court in catena of decisions that subsequent bail application is maintainable only when there is change of circumstance in favour of the accused. Reference in this context can be made to a decision in ***State of T.N. vs. S.A. Raja***, reported in **(2005) 8 SCC 380**. Here in this case, admittedly, and except the length of detention, no change of circumstances has taken place in favour of the accused and the learned Addl.P.P. has rightly pointed out the issue at the time of hearing.

11. In the case of ***NCB vs. Mohit Agarwal***, reported in **[2022] 0 Supreme (SC) 619**, a three Judges Bench of Hon'ble Supreme Court has held that the length of period of his custody or the fact that the charge sheet has been filed and the trial has commenced are by themselves not consideration that can be treated as persuasive ground for granting relief to the accused under section 37 of the NDPS Act.

12. That being so, the length of detention, to the considered opinion

of this court, can neither be a change of circumstance in favour of the accused nor be it a ground of releasing the accused on bail. Indisputably, the quantity of contraband substance recovered from the possession of the accused are of commercial quantity and as such, the embargo under Section 37 of the NDPS Act will definitely come into play here in this case. Moreover, from the materials placed on record and also from the case record as well as from the submission of the learned counsel for the parties, this Court is unable to derive its satisfaction that the accused Manjura Khatun is not guilty of the offence and that she will not commit similar offence while on bail.

13. On consideration of the matter in its entirety, this Court is not inclined to grant bail to the accused/petitioner, at this stage of trial. Therefore, prayer for bail is rejected. However, trial court is directed to expedite the trial and dispose of the case at the earliest.

14. The bail application stands disposed of.

JUDGE

Comparing Assistant