

GAHC010266312023



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

Case No. : Bail Appln./4321/2023

RUSTHANA BEGUM @ RUSTHANA BEM
W/O NAJRUL ISLAM
VILL- SHERALIPUR
P.S. BADARPUR
DIST. KARIMGANJ, ASSAM

VERSUS

THE STATE OF ASSAM
TO BE REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR H R A CHOUDHURY
Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI

ORDER

26.02.2024

Heard Mr. H. R. A. Choudhury, learned Sr. counsel for the petitioner. Also heard Mr. B. B. Gogoi, learned Additional Public Prosecutor, Assam.

This is an application made under **Section 439 Cr.P.C.**, seeking bail by the petitioner, namely, **Rusthana Begum @ Rusthana Bem**, in connection with **Special NDPS Case No. 61/2023 arising out of Badarpur PS Case No. 148/2023 registered under Sections 22(C)/25/29 of NDPS Act.**

The factual matrix leading to the present case is that an FIR has been lodged before the OC Badarpur PS on 08.06.2023 alleging *inter alia* that on 07.06.2023 at 7.20 PM, an information was received by him from reliable source that one person namely, Sahidul Alom is going to deal illegal narcotic contraband in Masly area under Malua PICIP. Accordingly, a GD entry was recorded vide Malua PICIP GDE No. 105 dated 07.06.2023 and after taking authority letter from OC Badarpur P.S., the staff of Badarpur P.S. conducted search in the rented house of the petitioner and recovered commercial quantity of YABA tablet. Thereafter, the petitioner along with co-accused were arrested.

Learned counsel for the petitioner has submitted that the petitioner is innocent and falsely implicated in the instant case and she became the victim of circumstances. The petitioner is a house wife having four minor children who are dependent on her and she was never implicated in any criminal cases earlier at any point of time. According to learned counsel for the petitioner, the seized contraband was not recovered from the possession of the petitioner, although her signature was taken subsequently in the seizure list. In fact, an altercation took place between the petitioner, her husband and the co-accused regarding purchasing of a mobile phone and a village bichar was convened to settle the matter in dispute. In the said bichar, the co-accused Sahidul Alom refused to pay an amount on the ground that he had not purchased any mobile from the husband of the petitioner and this has led to an altercation with Sahidul Alom, who threatened the petitioner and her husband that he would take revenge for maligning his image in public.

It is also the submission of the learned counsel for the petitioner that there is total violation of Sections 42(2), 50 and 57 of the NDPS Act. The Hon'ble Apex Court has held that if the mandatory provisions of the NDPS Act are not followed, that itself is a ground for bail.

It is further submitted that the petitioner being a lady, is in custody since

08.06.2023 i.e. around six months as of now. The charge-sheet reveals that there are 12 numbers of witnesses yet to be examined and as such it would take time for their examination for which the trial is not likely to be concluded early.

Under the facts and circumstances of the case, learned counsel for the petitioner prays to release the accused petitioner on bail. In support of his submission learned counsel has placed reliance on the following case laws: (i) *(2004) 12 SCC 266 in Sarija Banu alias Janarthani Alias Janani and another vs State through Inspector of Police* (ii) the order dated 17.08.2023 passed in BA No. 2316/2023 and (iii) the order dated 21.12.2023 passed in BA No. 2442/2023.

On the other hand, Mr. B. B. Gogoi, learned Additional Public Prosecutor, Assam has vehemently opposed to grant bail to the petitioner by stating that commercial quantity of contraband was recovered from the residential complex of the petitioner. Charge has already been framed against the petitioner along with other co-accused and no any witness was examined in this case. It is also submitted that for entertaining the prayer for bail in a case involving recovery of commercial quantity of narcotic drug and psychotropic substance, the court would have to mandatorily record the satisfaction in terms of the rider contained in Section 37 of the NDPS Act. As it appears that a large quantity of YABA tablets were recovered from the possession of the present petitioner and at this stage, bail may not be granted to her. In support of his submission learned PP has cited a case law vide *SLP (Criminal) No(s). 8137/2022 (State by the Inspector of Police vs B. Ramu)*.

I have considered the submissions made by the learned counsel for both the parties and also perused the scanned copy of trial court record.

It appears that after getting the information from the co-accused regarding possession of narcotic substances in the rented house of the petitioner, a GD entry was recorded. The recorded version of the same has been sent to the superior authority to conduct search and seizure. Accordingly, the informant along with

other police personal proceeded to the house of the petitioner and started raiding in her house and recovered a large quantity of YABA tablets from the house of the petitioner. There is no explanation why the petitioner had kept such huge quantity of narcotic drugs in her house. It is not alleged by the present petitioner that some other person had access to her rented house as a result of which there was every possibility of keeping such huge quantity of narcotic drugs by other person.

Under Section 37 of the NDPS Act, when a person is accused of an offence Punishable under Section 19 or 24 or 27(A) and also for offences involved in commercial quantity, he/she shall not be released on bail unless the Public Prosecutor has been given an opportunity to oppose the application for such release and in case the Public Prosecutor opposes the application, the Court must be satisfied that there is reasonable ground for believing that the person is not guilty for the alleged offence and he is not likely to commit any offence while on bail. These limitations are in addition to those prescribed under Cr.P.C or any other law enforced on the ground of bail.

The judgment referred to by learned counsel for the petitioner in *Sarija Banu* (supra), the case had different facts. It was established on record that a police party had illegally entered into the house occupied by the appellants and taken them into custody. A telegram in that regard had been sent to the Commissioner of police and other police officers. The sending of the telegram and receipt thereof was not disputed, therefore, the prosecution story was found to be suspicious coupled with the fact that there was violation of Section 42 of the NDPS Act and the petitioner was ordered to be released on bail. It was not only on account of non-compliance of Section 42 of the Act that the bail application had been accepted.

Having appreciated the submission made by the learned counsel for the parties and after scrutinizing the trial court record and the case diary as produced, this

Court is of the view that the issue as taken by the learned senior counsel representing the petitioner are all relevant for the trial but so far as his observation about Section 42 of the NDPS Act is concerned, apparently this Court finds there is sufficient documentation about the procedure and hence on that ground the bail cannot be considered.

Accordingly, the bail application of the petitioner stands rejected.

However, learned trial court is directed to take initiative to dispose of the matter early if possible by taking day to day hearing.

The petitioner is at liberty to approach before the trial court regarding bail in the subsequent stage of trial.

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

JUDGE

Comparing Assistant