

GAHC010267552023



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

Case No. : Bail Appln./4325/2023

SALMA BEGUM AND 2 ORS
W/O- LATE ABDUL BAREK, R/O- DIMAPUR NEAR MIYA COLONY, P.S. EAST
DIMAPUR, DIST. DIMAPUR, NAGALAND.

2: SMTI. DANMAYA CHETRY
C/O- SMTI DEEPA CHETRY
R/O- DIMAPUR EAST COLONY
P.S. EAST DIMAPUR
DIST. DIMAPUR
NAGALAND.

3: SMTI. KUMARI CHETRY
W/O- SRI BIR BAHADUR CHETRY
R/O- DIMAPUR DEJAFER NEAR GOVT. BETHEL AG SCHOOL
P.S. EAST DIMAPUR
DIST. DIMAPUR
NAGALAND

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE P.P., ASSAM

Advocate for the Petitioner : MR. N HASAN

Advocate for the Respondent : PP, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN
ORDER**

22.01.2024

Heard Mr. N. Hasan, learned counsel for the accused persons and Mr. R.J. Barua, learned Additional Public Prosecutor for the State respondent.

2. This application under Section 439 of the Code of Criminal Procedure, 1973, is preferred by accused persons namely, **Smti Salma Begum; Smti Danmaya Chetry; and Smti Kumari Chetri**, who have been languishing in jail hazot in connection with the **NDPS Case No. 18[T]/2023**, under Sections 21[c]/29 of the NDPS Act, pending before the learned Special Judge, Tinsukia, for granting bail.

3. The said case has been registered on the basis of an FIR lodged by S.I. Bongshi Timung, of Tinsukia P.S. on 30.11.2022.

4. The essence of allegations made in the FIR dated 30.11.2022, is that acting on a tip off on 30.11.2022, at about 6:45 pm, they have apprehended three women namely, Smti Salma Begum; Smti Danmaya Chetry; and Smti Kumari Chetri, from parking area of Tinsukia Railway Junction, Hijuguri and recovered 312.69 grams of suspected Heroin from them and during interrogation they reveals that the said consignment of contraband substance was supposed to be delivered to one Sri Tulen Hazarika @ Babu and Sri Turanjit Sonowal and on being laid and shown by Salma Begum they have found Sri Tulen Hazarika @ Babu and Sri Turanjit Sonowal in a KIA Seltos vehicle from the said parking area.

5. Mr. Hasan, learned counsel for the accused submits that the accused persons were arrested on 30.11.2022, and since then they have been

linguishing in jail hazot for last 402 days. Mr. Hasan further submits that after completion of investigation the IO had submitted charge sheet and thereafter, the learned court below had framed charge against the accused persons under Sections 21[c]/29 of the NDPS Act and thereafter, the learned court below has examined 4 witnesses out of 11 cited witnesses in the charge sheet. Mr. Hasan also submits that they are ready to cooperate with the investigating agency, and therefore, it is contended to allow this petition.

6. However, to a pointed query of this Court, as to how the accused persons will satisfy the twin requirement of section 37 of the NDPS Act, then the learned counsel for the accused submits that he has no answer to the same.

7. On the other hand Mr. Barua, learned Additional Public Prosecutor submits that the quantity of contraband substance allegedly recovered from the possession of the accused are of commercial quantity and as such, the embargo under Section 37 of the NDPS Act will come into play and that the accused persons have failed to satisfy the aforesaid requirement. Mr. Barua further submits that the trial is going on and as many as 4 witnesses have been examined by the learned court below, out of 11 cited witnesses in the charge sheet and that the accused persons are hails from Nagaland and if enlarged on bail then it will be difficult to procure their attendance and consequently it will affect speedy disposal of the case. Therefore, it is contended to dismiss the petition.

8. Having heard the submission of learned counsel for both the parties, I have carefully gone through the petition as well as the documents placed on record and also perused the case diary with the assistance of learned Additional Public Prosecutor.

9. Indisputably, the quantity of contraband substance recovered from the possession of the accused persons are of commercial quantity. And as such, the embargo under Section 37 of the NDPS Act will definitely come into play. But, from the materials placed on record and also from the scanned copy of the record of learned court below and also from the submission of the learned counsel for the accused this Court is unable to derive its satisfaction that the accused persons are not guilty of the offence and that they will not commit similar offence while on bail.

10. Further, it appears that the offences are of serious in nature and trial is going on and the learned court below has examined 4 witnesses out of 11 cited witnesses in the charge sheet. The accused are from Nagaland and if at this stage the accused persons are enlarged on bail, it will cause delay in disposal of the case.

11. Having considered above and also considering the nature and gravity of the offence, this Court is of the view that this is not a fit case where the privilege of bail can be extended to the accused persons.

12. Accordingly, the petition stands dismissed. However, the learned court below is directed to make an endeavor to dispose of the case as expeditiously as possible and if necessary recourse to the provision of section 309(1) Cr.P.C, without being influenced by any of the observation made herein above as the same are made to dispose of this bail application, not on merit of the case.

JUDGE

Comparing Assistant