

GAHC020004292024



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

Case No. : Bail Appln./16/2024

JAMES SHANGJAM
S/O YARUIKHAI
R/O DAROGAJAN VILLAGE
DIMAPUR NAGALAND

VERSUS

THE STATE OF NAGALAND
KOHIMA NAGALAND

Advocate for the Petitioner : Z. KULNU

Advocate for the Respondent : P.P, NAGALAND

**BEFORE
HON'BLE MR. JUSTICE BUDI HABUNG**

ORDER

Date : 27-08-2024

Heard Mr. Z. Kulnu, learned counsel for the accused applicant. Also heard Mr. Kevi Angami, learned P.P. State of Nagaland.

2. By filing this application under section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023, the accused petitioner prays for his release on bail. He was arrested and now in

judicial custody in connection with Narcotic P.S. PHQ Case No.22/2023 u/s 28 read with section 27A NDPS Act, 1985.

3. It is submitted that the accused applicant was arrested on 22.3.2024 in connection with suo-moto complaint filed on 20.12.2023 u/s 28 read with section 27A NDPS Act. Earlier two bail applications filed before the Court of Special Judge, NDPS Kohima for release of the accused on bail on health ground and on merit has been rejected on 24.5.2024 and 12.7.2024 respectively. And this is the third subsequent bail application for his release on bail.

4. The learned counsel for the accused applicant submits that the accused is not named in the FIR. It was during the investigation of the case that the accused has been arrested basing on the disclosure statement of one of the co-accused alleging that the present accused James Shangjam has transferred some contraband on his behalf on one occasion. The case of the petitioner is that the police has not recovered any contraband from the accused applicant nor has seized anything from his possession during the search conducted in the residence of the accused applicant. In view of the above, according to the learned counsel for the petitioner, there is no prima facie case against the accused applicant so as to attract the provision of section 27A and section 28 of the NDPS Act. Therefore, rigorous provision of section 37 of NDPS Act is also not attracted against the accused in the instant case.

5. In support of his submission, the learned counsel for the petitioner relied upon the decision of the Hon'ble Supreme Court in ***Rhea Chakraborty vs Union of India and anr. re-***

ported in 2021 CRL.L.J.248, AIR Online 2020 Bomb 1252

whereby it is observed that *there must be a commercial quantity being recovered and further there ought to be an element of some degree of continuity and regularity in drug dealing before a person can be said to be trafficking drugs*. The learned counsel submits that in the instant case, although the accused applicant had delivered a bag to one unknown person at the request of one Mr. Mitilesh in good faith; however, he did not know what was contained in the said bag and as such, delivering the bag without knowing the content inside the bag does not amount to harbouring to attract section 27A of the NDPS Act against the accused. He further submits that in ***Rhea Chakraborty V. UOI & Anr.*** (supra), although the accused was arrested for harbouring, but she was released on bail as no any commercial quantity of contraband item was recovered from her possession. He further submits that, in the instant case, there is no any recovery of any contraband item from the accused nor there is any continuity and regularity in drugs dealing by the accused petitioner.

6. The learned counsel for the petitioner further clarifies and submits that previously the accused applicant was accused of peddling drugs way back in the year 2017 while he was working as inter State Taxi driver Nagaland-Manipur; however, he was soon released and all charges against him were dropped and he was exonerated by the Court of law. He further, submits that at present there is no any criminal cases pending against the accused before any Court of law; and as such, the petitioner has no criminal antecedent. It is submitted that in the event of his release, the accused applicant is willing to abide by any terms

and condition imposed by the Court for his release and to co-operate with the investigating agency.

7. The Case Diary cum status of the above P.S case as called for has been produced and I have perused the same.

8. The record reveals that the accused James Shangjam was found arrested in connection with another NDPS case where he was granted bail. However, the detail of the above case is not available on record, it is stated that the same would be submitted along with the charge-sheet. The record further reveals that on 12.3.2024, the consignment of 49 soap cases of heroine was delivered to the accused applicant James Shangjam from Manipur through one Mitilesh and the same was delivered by him to Bahar Uddin and made a profit of Rs.49,000/-. The record also reveals that on CDR analysis, the accused is found to have made frequent call contacts with many associates which was found beyond normal call contacts and acquaintance which according to the learned P.P. clearly indicates the preparation made by the accused for the transportation of contraband substances. The record reveals that the accused had voluntarily disclosed and made a categorical statement before the I.O of the case about his involvement of illicit trafficking and that he has been actively participating in drug business with many associates procuring from Manipur and supplied it to Nagaland. The accused was also found well connected with the upward and downward linkages of the drug chain and so far, 11 persons have been arrested in connection with the present case including the accused person. The record also reveals that accused applicant James Shangjam was not arrested for a mere suspicion but on being found sufficient

ground of his involvement in drug trafficking and the investigation of the instant case is still going on and at crucial stage for identification of the suspected persons who were involved in illicit trafficking with accused applicant James Shangjam.

9. Under the above facts and circumstances, the learned P.P vehemently objects the grant of bail to the accused and submits that the this is a sensitive matter involves with supply of contraband substances and once bail is granted to the accused, he will leak out all the confidential by contacting others as well as by meeting the suspected persons and will surely hamper the ongoing investigation.

10. The learned P.P. further submits that the earlier two bail applications moved for release of the accused was rejected after considering the fact and circumstances of the case including the incriminating material found against the accused for his involvement in the instant case. While filing this bail application for his release, the accused applicant has not taken any new grounds for his release. Under the circumstances, he submits that the accused cannot be released on bail, over the same set of grounds on which the bail application of the accused was rejected, earlier. In support of his submission, the learned P.P. has relied upon the decision in the ***State of M.P vs Kajad reported in (2001) 7 SCC 673***, whereby it is observed that "*liberal approach in the matter of bail under the Act is uncalled for.*" The learned P.P. has referred to paragraph 8 of the said judgment which is reproduced herein below:-

"8.It has further to be noted that the factum of the rejection of his earlier bail application bearing Misc. case No. 2052 of 2000 on 5.6.2000 has not been denied by the respon-

dent. It is true that successive bail applications are permissible under the changed circumstances. But without the change in the circumstances the second application would be deemed to be seeking review of the earlier judgment which is not permissible under criminal law as has been held by this Court in Hari Singh Mann v. Harbhajan Singh Bajwa & Anr. [2001 (1) SCC 169] and various other judgments."

11. The learned P.Ps also relied upon the decision of the Hon'ble Supreme Court in the case of *Union of India vs Ajay Kumar Singh alias Pappu* reported in *2023 SCC OnLine SC 346* wherein at paragraph 16 it is observed as follows:-

"16. In view of the above provisions, it is implicit that no person accused of an offence involving trade in commercial quantity of narcotics is liable to be released on bail unless the court is satisfied that there are reasonable grounds for believing that he is not guilty of such an offence and that vhe is not likely to commit any offence while on bail."

12. The learned P.P. submits that in the instant case since the accused applicant is found involved in drug business earlier also, there is every likelihood that he may commit the same offence if enlarged on bail as his antecedents indicates that he is a habitual offender. While referring to the ***Rhea Chakraborty case*** (supra), the learned P.P submits that the facts and circumstances of the said case is altogether different in that, in the said case the applicant was not alleged of commission of offence involving commercial quantity of contraband and she had no other criminal antecedents and further that she was not a part of the chain of drug dealer unlike the present case. And further to that, the person who she was alleged to have harboured was no longer alive, as such there was no likelihood of her committing another offence while on bail. However, in the

instant case, the accused has antecedents of his involvement in the similar nature of case earlier and admittedly, he had delivered the bag containing contraband items received from Manipur and delivered at Nagaland and thereby earned profit of Rs.49,000/-. It is also seen that section 27A of the NDPS Act has been duly invoked in the instant case and mandatory period of investigation as such has not been over. Therefore, the learned P.P objected the release of the accused person on bail at this stage.

13. I have considered the submissions made by both the learned counsel for the parties. Also perused the record produced along with CD cum status report.

14. Upon consideration, prima facie there is sufficient incriminating material against the accused person for his involvement in the instant case. The accused applicant is aware of the chain of business transection of contrabands drugs and made profits. Further, the prayer made by the learned counsel for the petitioner that section 27A and section 28 of the NDPS Act is not attracted in the present case and to release him on bail in my considered opinion is a question of fact requiring consideration of evidences after submission of charge sheet, hence, the same has not been discussed here at this stage and it is left to be decided by the trial court after receipt of charge sheet, however, without being influenced by any observation made by this Court. Moreover, the accused applicant has not taken any new ground in this subsequent bail application for his release on bail

15. For the reason stated above, and considering the material found on record and also considering that the matter is

still under active investigation, I am not inclined to grant bail to the accused at this stage. Accordingly, this bail application for his release is rejected.

15. Return the Case Diary.

**Sd/-
JUDGE**

Comparing Assistant