



GAHC010136412022

Page No.# 1/10



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

Case No. : Bail Appln./1635/2022

SMT. CHONGHOI HAOKIP
W/O.- SHRI LUNGSIBUI THIUMAI.
R/O. VILL.- MAKUILONGDI,
P.S.- SENAPATI, DIST.- SENAPATI, MANIPUR.

VERSUS

UNION OF INDIA
REP. BY THE STANDING COUNCIL TO THE DIRECTORATE OF REVENUE
INTELLIGENCE.

Advocate for the Petitioner : MR. Y S MANNAN

**Advocate for the Respondent : Mr. SC Keyal, SC, DRI,
Ms. P Das, Advocate.**

BEFORE
HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI

JUDGMENT

Date : 11-08-2022

Heard Shri YS Mannan, learned counsel for the applicant, namely, Smt. Chonghoi Haokip, who has filed this bail application under Section 439 of the Cr.PC praying for bail in connection with DRI Case No.18/CL/NDPS/HEROIN & METH/DRI/GZU/2021-2022 under Section 8(c)/21(c)/22(c)/23(c)/25 of the Narcotics



Drugs and Psychotropic Substances (NDPS) Act, 1985.

- 2.** The applicant was arrested on 04.02.2022.
- 3.** Pursuant to the order of this Court dated 12.07.2022, the scanned copies of the case record have been received. Further, Shri SC Keyal, learned Standing Counsel, DRI has also produced the records of the case in original.
- 4.** At the outset, the learned counsel for the applicant has submitted that the applicant along with another had earlier filed BA/871/2022 which, however, was rejected vide order dated 05.05.2022.
- 5.** The following contentions have been advanced by the learned counsel for the applicant in support of the prayer for bail:
 - i) The applicant has completed 185 days in custody and therefore, she is entitled to default bail;
 - ii) As per Section 439A of the Cr.PC (as per the Assam Amendment), the applicant falls within the category of "minor, woman and sick or infirm" and therefore, entitled to a special privilege;
 - iii) The applicant is a woman of 32 weeks pregnancy and therefore, she is required to be released on bail.
- 6.** In support of his submissions, Shri Mannan, learned counsel has placed reliance upon the following decisions:

- i) Order dated 29.01.2021 passed by the Karnataka High Court (Kalaburagi Bench) in Crl. Pet. No. 200107/2021 (Smti. Rekha @ Siddamma & Anr. Vs. State of Karnataka);
- ii) Order dated 12.05.2022 passed by the Karnataka High Court in Crl. Pet. No. 2306/2022 (Nethra Vs. State of Karnataka);
- iii) Order dated 24.07.2021 passed by the Himachal Pradesh High Court in Crl. MP(M) 243/2021 (Monika Vs. State of HP);
- iv) (2009) 17 SCC 631, (Sanjay Kumar Kedia Vs. Intelligence Officer, NCB).

7. In the case of Smti. Rekha @ Siddamma (*supra*), the Hon'ble Karnataka High Court granted bail to the first applicant who was a pregnant lady. The accusation, however, was mainly with a clash within two groups.

8. In the case of Nethra (*supra*), the Hon'ble Karnataka High Court considered the bail application of the applicant who was a lady holding that she was statutorily entitled for such consideration.

9. In the case of Monika (*supra*), the Hon'ble Himachal Pradesh High Court had also considered the fact of pregnancy of the applicant as a relevant factor for consideration of bail. The learned counsel has also drawn the attention of this Court to the elaborate discussions made in this case by the Hon'ble Himachal Pradesh High Court wherein, reference has also been made to the case of *Dataram Singh Vs. State of Uttar Pradesh*, reported in (2018) 3 SCC 22 wherein, the Hon'ble Supreme Court

has held that the exercise of consideration of a bail is a discretionary one which has to be done judiciously, compassionately and in a humane manner.

10. In the case of *Sanjay Kumar Kedia (supra)*, the Hon'ble Supreme Court had considered the issue of grant of extension beyond the mandatory period of 180 days. By referring to the earlier judgment of *Hintendra Vishnu Thakur Vs. State of Maharashtra*, reported in (1994) 4 SCC 602, it has been held that such an application, though may be filed by the Investigating Officer, has to be routed through the Public Prosecutor with due application of mind.

11. *Per contra*, Shri SC Keyal, learned Standing Counsel, DRI by referring to Section 36A(4) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act) submits that though the mandatory period has been prescribed as 180 days, the proviso prescribes, if it is not possible to complete the investigation within the stipulated period, such period may be extended by the Special Court up-to one year on the report of the Public Prosecutor indicating the progress of the investigation and the specific reasons for the detention of the accused beyond the prescribed period.

12. In the instant case, by referring to the records of the case, Shri Keyal, learned Standing Counsel has placed an order dated 22.07.2022 passed by the learned Special Judge, Kamrup (M) in Petition No. 2099/2022 filed by the IO of the case through the learned Special PP. By the said order, the time for investigation has been extended for another period of two months. In view of the same, the argument regarding completion of mandatory period is not tenable.

13. With regard to the second submission regarding the provisions of Section 439A of the Cr.PC (Assam Amendment), though it is a fact that certain categories of person are to be given certain privileges, such privileges are not mandatory in nature and

everything depends on the facts and circumstances of the case and upon a discretion to be exercised by the learned Court. He further submits that Section 37 of the NDPS Act would also come into play.

14. On the third ground urged on behalf of the applicant regarding her pregnancy, the learned Standing Counsel, DRI submits that all necessary medical facilities have been given to the applicant and timely check-ups are being done regularly. Referring to a latest communication by the Medical and Health Officer, Central Jail, Guwahati dated 08.08.2022 to the Superintendent, Central Jail, it has been stated that the applicant is on her eight month of pregnancy and has been provided with all necessary medicines and supplements. She was further referred to the O&G Department, GMCH and all tests, including Ultra Sonography are being done. The condition of the applicant *qua* her pregnancy appears to be normal. The learned Standing Counsel further submits that at the relevant time, the applicant would be shifted to the GMCH for her delivery.

15. In support of his submissions, Shri Keyal, learned Standing Counsel has placed reliance upon a recent judgment of the Hon'ble Supreme Court dated 19.07.2022 passed in CrI. Appeal Nos. 1001-1002/2022 (Narcotics Control Bureau Vs. Mohit Aggarwal). In the said case, elaborate discussions have been made upon the powers of the Court for grant of bail within the restrictive parameters of Section 37 of the NDPS Act. The Hon'ble Supreme Court has held that before grant of bail, it is necessary for the Court to come to a satisfaction that there are reasonable grounds for believing that the accused is not guilty of such offence.

16. Shri Keyal, learned Standing Counsel further submits that sufficient materials are available against the applicant and the seizure is of a huge quantity, namely, 679.60 gram of Heroin, 11.00 kg (1,10,000 tablets) of Methamphetamine tablets,

Indian Currency of Rs.4,45,200/- and the vehicle, in question.

17. Replying to the submission made on behalf of the applicant that she is innocent and has no connection with the business, Shri Keyal, learned Standing Counsel has referred to the voluntary statements recorded on 04.02.2022 and 23.02.2022 whereby the applicant has admitted that the contrabands belonged to her and that she and her husband were involved.

18. The rival submissions have been duly considered and materials placed before this Court carefully examined. Though in the opinion of this Court, ideally, in an application for bail, elaborate discussions on the *inter se* merits are not to be made so as to avoid causing of any prejudice to either of the parties, in the present case since elaborate submissions have been made, those are to be considered and answered. However, while doing so, this Court would reiterate that the observations that would be made are tentative in nature based upon the *prima facie* view.

19. The first submission with regarding to the completion of the mandatory period has to be examined in the context of the provisions of the NDPS Act. As pointed out by the prosecution, the NDPS Act itself provides for extension of the said period up-to one year on an application made by the Special Court on a report of the Public Prosecutor under Section 36A(4). The records reveal that on an application so made, the learned Special Judge, vide order dated 22.07.2022 has extended the period by two months. Though a submission has been made on behalf of the applicant that there was no report of the Public Prosecutor before such order was passed, this Court is of the view that the validity of the order unless exclusively and specifically questioned in an appropriate proceeding, this Court would not enter into the merits of the same, more so when *prima facie* the order is in accordance with law. It is noticed that the learned Special Court took into consideration the quantity and nature of the

seizure whose market value would be about Rs. 7 crores, name of the applicant being the registered user of the mobile numbers, the reasons for such extension which would include further investigation as the culprits are working from behind. Further, the extended period is only two months which is must less than the maximum permissible.

20. The case of Sanjay Kumar Kedia (*supra*) which was cited in this regard is clearly not applicable as the facts and circumstances were wholly different and in that case, no compelling reasons was discernible for such extension and the order was passed without notice. Further, as observed above, in the case in hand, there is no specific challenge to the order of extension dated 22.07.2022.

21. With regard to the contention regarding special privilege, though the learned counsel for the applicant is correct in contending that by the Assam Amendment of the Cr.PC made in the year 1983, the expression “under the age of 16 or a woman or a sick or infirm person” was added in Section 439 and renumbered as Section 439A, the said submission has to be examined from the context of the offence involved. The offence is under the NDPS Act which is a special and all encompassing Act which includes the provision for consideration of bail. For ready reference, the relevant section is extracted hereinbelow:

“37. Offences to be cognizable and non-bailable

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), -

(a) Every offence punishable under this Act shall be cognizable;

(b) No person accused of an [offences under section 19 or section 24 or section 27A and also for offences involving commercial quantity] shall be released on bail or on his own bond unless-

(i) The Public Prosecutor has been given an opportunity to oppose

the application for such release, and

(ii) Where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

(2) The limitations on granting of bail specified in clause (b) of sub-section (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974), or any other law for the time being in force on granting of bail."

22. As can be noted, the section starts with a non-obstante clause and overrides all provisions of the Cr.PC. Further, Section 37(2) of the NDPS Act makes it clear that the limitations on grant of bail are in addition to the limitations in the Cr.PC or any other law for the time being in force on grant of bail.

23. On an analysis of Section 37 of the NDPS Act with regard to bail, it can be seen that the Act being a special enactment which has an inbuilt mechanism with regard to bail has introduced two statutory restrictions before grant of bail apart from giving an opportunity to the Public Prosecutor which are as follows:

(i) There has to be *prima facie* satisfaction regarding existence of reasonable grounds that the accused is not guilty and

(ii) The accused is not likely to commit any offence while on bail.

As noted above, the aforesaid conditions are in addition to the limitations under the Cr.PC or any other law relating to bail.

24. Thus, it is seen that the parameters for consideration of a bail under the NDPS Act are not the same as under the Cr.PC. Under the present Act not only the conditions are more stringent and narrow, the privileges which would otherwise be available under the Cr.PC are also not relevant. Juxtapositioned, the presumption is almost contrary in the NDPS Act wherein the Court has to come to a satisfaction that there are reasonable grounds for believing that the accused is not guilty of such

offence **and** that he is not likely to commit any offence while on bail.

25. The aforesaid satisfaction is a subjective one which are to be based on the materials on record and in the instant case all the circumstances, namely, the quantity involved, both of the contraband and the currency, the nature of the contraband (Heroin), the seriousness of the offence and the involvement of the accused, as would also be revealed from the voluntary statements, would go against the accused.

26. On the aforesaid expression "reasonable grounds", the Hon'ble Supreme Court in the case of Mohit Aggarwal (*supra*) after discussing the observations made in earlier cases has held as under:

"14. To sum up, the expression "reasonable grounds" used in clause (b) of Sub-Section (1) of Section 37 would mean credible, plausible and grounds for the Court to believe that the accused person is not guilty of the alleged offence. For arriving at any such conclusion, such facts and circumstances must exist in a case that can persuade the Court to believe that the accused person would not have committed such an offence. Dove-tailed with the aforesaid satisfaction is an additional consideration that the accused person is unlikely to commit any offence while on bail.

15. We may clarify that at the stage of examining an application for bail in the context of the Section 37 of the Act, the Court is not required to record a finding that the accused person is not guilty. The Court is also not expected to weigh the evidence for arriving at a finding as to whether the accused has committed an offence under the NDPS Act or not. The entire exercise that the Court is expected to undertake at this stage is for the limited purpose of releasing him on bail. Thus, the focus is on the availability of reasonable grounds for believing that the accused is not guilty of the offences that he has been charged with and he is unlikely to commit an offence under the Act while on bail."



27. The ground of pregnancy, though relevant, has to be examined from the nature of the offence. When the Court, *prima facie* has come to a finding that there is no scope of enlarging the applicant on bail at this stage, the issue of pregnancy, in the opinion of this Court shall not play a major role. While coming to the said finding, this Court has taken into consideration the communication made by the Medical and Health Officer, Central Jail, Guwahati regarding the health condition of the applicant, the treatment provided to her, timely and regular check-ups etc.

28. Without further going into the merits of the case so as to avoid causing any prejudice to either of the parties, this Court also cannot ignore the objective and purpose of the enactment which is to curb the menace of drugs in the society.

29. In view of the above, this Court is of the opinion that the applicant is not entitled to the privilege of grant of bail.

30. Accordingly, the bail application stands dismissed.

31. The records are returned herewith.

JUDGE

Comparing Assistant