

GAHC030001472023



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

Case No. : Bail Appln./9/2023

Lalduhsaka
S/o Lalrosanga, Chanmari West, Aizawl

VERSUS

State of Mizoram
Mizoram

Advocate for the Petitioner : Mr. Johny L Tochhawng

Advocate for the Respondent : Mrs. Linda L Fambawl

BEFORE
HONOURABLE MR. JUSTICE NELSON SAILO

ORDER

21.04.2023

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Heard Mr. Johny L. Tochhawng, learned counsel for the applicant who submits that the applicant by filing this application under Section 439 of the CrPC prays for grant of bail.

2. The learned counsel submits that the petitioner was arrested on 02.12.2022 at around 10:00 pm by the Excise & Narcotics personnel for alleged possession of 12 grams of suspected heroin which were recovered from a nearby bush in Chanmari West, Aizawl. The recovered substance was sent for forensic examination and the

same is found to be heroin with purity of 81% w/w.

3. Pursuant to the investigation conducted by the Excise & Narcotics personnel, chargesheet was filed on 01.02.2023. While framing the charge, the applicant pleaded not guilty and accordingly the matter is proceeded with for regular trial.

4. The learned counsel for the applicant submits that the applicant is innocent and he is the sole breadwinner of the family. He submits that the applicant has three children, aged 7 years, 4 years and 9 months and they are in constant need of medical treatment. To substantiate the submission, the learned counsel has drawn the attention of this Court to the medical documents annexed in the application as annexures 11, 12 and 13. The learned counsel submits that if the applicants is released on bail, the applicant undertakes to abide by any condition imposed by the Court and he will extend full cooperation with the trial proceedings and will not jump bail. In support of his submission, the learned counsel has relied upon the following authorities:-

(i) Kheirun Bibi Vs. State of Manipur, (1994) 1 GLR 295.

(ii) Satender Kumar Antil Vs. Central Bureau of Investigation and Another, (2022) 10 SCC 51.

5. Ms. Mary L. Khiangte, learned Addl. Public Prosecutor on the other hand submits that the facts involved in the authorities relied upon by the learned counsel for the applicants are different and cannot be applied to the instant case. She submits that in *Satender Kumar Antil* (Supra), the observation and direction passed by the Apex Court was regarding a situation before charge sheet is filed and trial begins. In the instant case, the charge sheet has already been filed and the trial has begun. Similarly, in the case of *Kheirun Bibi* (Supra), the applicant in that case was a person who was aged 50 years. Therefore, it was the considered view of the Court that there was no chance for the person to commit similar offence and to jump bail if release. The same not being the case in the present application, the bail application may be rejected.

6. I have heard the submissions made by the learned counsels for the rival parties and I have perused the materials available on record.

7. The allegation against the applicant is that he has been found to be possessed 12 grams of suspected heroin. The same was sent for forensic examination and the same tested to be heroin with purity of 81% w/w. The charge framed against the applicant is under Section 21 (b) of the ND&PS Act and if convicted the punishment provided Rigorous Imprisonment for a term which may extend to 10 years and with fine and which may extend to Rs. 100,000/-.

8. It is seen that during the pendency of the investigation, the applicant filed three bail applications i.e. Bail Application No. 1513/2022, Bail Application No. 144/2023 and Bail Application No. 156/2023 before the learned Trial Court. The first Bail Application was rejected vide Order dated 14.12.2022 since there was ongoing investigation and objection from the prosecution was advanced that the applicant may temper with the evidence or abscond or even commit a similar offence if bail was granted. The bail application was therefore rejected. Thereafter, in the second bail application, the learned Trial Court considering the fact that the mandatory period of 60 days had not expired, the learned Trial Court rejected the bail application vide Order dated 31.01.2023. In the third bail application, the learned Trial Court in view of the fact that charge sheet was filed within a period of 60 days of the applicant being in custody held that the applicant was not entitled to default bail under Section 167 of the CrPC. As such, the bail application was again rejected.

9. By presenting the instant bail application before this Court, the learned counsel for the applicant has projected the case of the applicant by submitting that the applicant is the sole breadwinner of the family having three minor children who are unwell and are solely dependent on the earning of the applicant. The learned counsel for the applicant has also drawn the attention of this Court to the certificate given by the Local Council of Chanmari West which states that the family members of the applicant

are not able to fend for themselves and it is the Local Council of the public of the locality who are extending help to the family of the applicant. This factor alone ordinarily may not be the ground for grant of bail but the fact remains that after the filing of the chargesheet on 03.02.2023, charge was framed against the applicant and to which he pleaded not guilty. Thereafter, the learned Trial Court has proceeded with the Trial by asking the prosecution to link their evidence. It is submitted at the bar that prosecution witness No. 1, who is the seizing officer has been summoned to give her evidence by fixing 10.03.2023 for her appearance. However, PW1 failed to appear on that date and therefore, another date i.e. 06.04.2023 was fixed for PW1 evidence. Even on 06.04.2023, PW1 failed to appear and therefore, another date i.e. 03.05.2023 has been fixed for PW1 evidence. From the charge sheet produced by the learned counsel for the applicant, it is seen that there are as many as 8 prosecution witnesses, which includes two independent witnesses. The applicant admittedly has been in custody since his arrest on 02.12.2022 and it is not known as to when the evidence of the prosecution witnesses can be completed and the entire trial be concluded. Therefore, upon considering the facts and circumstances of the case, I am of the considered view that the applicant should be enlarged on bail pending conclusion of the trial.

10. In the result, the applicant is directed to be released on bail upon furnishing of bail bond of Rs. 50,000/- with one surety of the like amount with the satisfaction of the learned Trial Judge. The surety produced by the applicant should be certified by the Local Council Chairman of Chanmari West, as a person who is a permanent resident of the said locality.

11. The bail is granted to the applicant with the further condition that the applicant shall not indulge himself in committing a similar offence and he shall appear before the learned Trial Court as and when he is summoned.

12. With the above observations and directions, the bail application stands disposed

of.

JUDGE

Comparing Assistant