

GAHC030002172023



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

Case No. : Bail Appln./15/2023

Sh. Lalzokima
Zokhawthar, Champhai District, Mizoram

VERSUS

State of Mizoram
Aizawl

Advocate for the Petitioner : Mr. S. Vanlalhriata

Advocate for the Respondent : P.P./Addl.PP, Mizoram

B E F O R E
HON'BLE MRS. JUSTICE MARLI VANKUNG
ORDER

25.05.2023
(Thursday)

Heard Mr. S. Vanlalhriata, learned counsel for the applicant along with Mrs. Linda L. Fambawl, learned Addl. Public Prosecutor, Mizoram.

The learned counsel for the applicant has filed this bail application under Section 439 Cr.PC read with Section 37 of the ND & PS Act, 1985 praying for release of the

accused/applicant on bail.

He submits that the accused/applicant was arrested on 23.07.2022 and was booked in Special Narcotic PS Case No.34/2022 for an offence under Section 21(c)/25 of ND & PS Act.

A brief back ground of the case was that on the night of 23.07.2022 at around 12:45 A.M, information was received that some unknown person possessed contraband drugs within Zarkawt area. Based on the information, the ASI Ramfangzauva, CID proceeded towards Zarkawt and on reaching Babutlang, Zarkawt he had seized 60 soap cases of suspected heroin packed in one Rambo polythene from the back seat of Ignis Car bearing Registration No. MZ 01 W 3740 which was driven by the accused/applicant. The suspected heroin weight 836 grams.

The learned counsel submits that the petitioner was innocent of the charged and that he is entitled to be released on bail for non-compliance of the mandatory provisions of Section 42 of the ND & PS Act. He submits that from the deposition of PW-1 and from his cross-examination, it can be clearly made out that the provision of Section 42 of ND & PS was not followed since PW-1 in his cross-examination has admitted to the same.

In support of his submissions he has cited the following cases: **Boota Singh & Ors .Vs. State of Haryana** reported in **(2021) AIR(SC) 1913**, **Karnail Singh .Vs. State of Haryana** reported in **(2009) 8 SCC 539**, **Sarija Banu (A) Janarthani @ Janani & Anr. .Vs. State through Inspector of Police** reported in **(2004) 12 SCC 266** and the Judgment of this Court in **Krosmawii .Vs. State of Mizoram** reported in **(2022) 4 GauLT 256**.

Mrs. Linda L. Fambawl, learned Addl. Public Prosecutor on the other hand submits that

this bail application is made under Section 37 of the ND & PS, Act for which this Court is required to be satisfied that the accused/applicant is innocent from the charge. On perusal of the charge-sheet, it can be clearly made out that the accused/applicant is guilty of the offence since the charge-sheet clearly states that the contraband substances were seized from the vehicle of the accused/applicant. She further submits that on perusal of the Judgment of the Order of the Apex Court in **Sarija Banu (A) Janarthani @ Janani & Anr. (Supra)**, the bail application was made under Section 439 Cr.P.C. and therefore the Hon'ble Apex Court had granted bail in the said case.

Having heard the submissions made by both the parties and on careful perusal of the documents on records, it is seen that charge-sheet was submitted against the accused/applicant under Section 21(c)/25 of the ND & PS, Act on finding *prima facie* case against the accused/applicant and the seized contraband substances weighing 836 grams was recovered from the vehicle of the said accused/applicant.

It is seen that the case is at evidence stage and one witness has been examined out of remaining 5 (five) prosecution witnesses yet to be examined.

This Court thus finds that it would be appropriate to examine the remaining witnesses to decide whether the mandatory provisions of ND & PS Act has been violated. The case being at the stage of recording evidence and considering the fact that, it has not been disputed at this stage, that contraband substance suspected to be heroin weighing 836 grams was seized from the vehicle of the said accused/applicant, this court is of the considered view that whether there is non-compliance of section 42 ND & PS Act is yet to be looked into. The circumstances in **Sarija Banu (A) Janarthani @ Janani & Anr. (Supra)** case is different

from the instant case and the Apex Court had granted bail considering the '*special facts*' of the case. This court thus finds that no sufficient ground has been made out for granting bail to the accused/applicant at this stage.

Accordingly, Bail Application No.15/2023 stands dismissed and disposed.

JUDGE

Comparing Assistant