

GAHC030002462023



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

Case No. : Bail Appln./16/2023

Sh. Albert Lalawmpuia and Anr.
Dinhtar, Aizawl, Mizoram 2: Sh. Lalfakzual

VERSUS

State of Mizoram r/b the Secretary, Home Department and Anr.
Aizawl2:A.S.I. PC Vanlalruata
Special Narcotics Police Station
Aizawl
Mizora

Advocate for the Petitioner : Mr B Lalramenga

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

ORDER

BEFORE
HONOURABLE MR. JUSTICE NELSON SAILO

01.06.2023

Heard Mr. B. Lalramenga, learned counsel for the petitioners who submits that by filing this application under Section 439 Cr.PC read with Section 37 of the ND&PS Act, 1985, the petitioners pray for their enlargement on bail. The petitioners were arrested on 12.02.2021 at around 3:30 P.M. near Ramhlun South Bus Stand, pursuant

to the alleged seizure of 2.762 kgs of suspected Methamphetamine kept in black and blue colour sachets. As a result of the seizure, Special Narcotics PS Case No. 7 of 2021 dated 12.02.2021 under Section 22(c) of the ND&PS Act was registered against the petitioners. The learned counsel submits that after their arrest, the petitioners were released on interim bail on many occasions and the last order in respect of petitioner No. 1 being Order dated 06.04.2022 by which he was released on interim bail and directed to surrender again on 04.05.2022. Since then, the petitioner No. 1 is in jail.

[2.] In respect of petitioner No. 2, he was also released on interim bail on seven occasions and the last order being Order dated 12.12.2022 passed by the Special Court, ND&PS Act, Aizawl in Bail Application No. 1511 of 2022 by which the petitioner No. 2 was released on interim bail and was directed to surrender himself before the Court on or before 24.01.2023. The petitioner No. 2 surrendered himself accordingly and since then, he is in jail.

[3.] The learned counsel for the petitioners submits that the grounds taken for grant of bail to the petitioners amongst others is that Section 41 and 42 of the ND&PS Act has not been complied with by the arresting authorities before arresting the petitioners. In this connection, he refers to the case of *Sarija Banu -Vs- State*, reported in (2004) 12 SCC 266. He further submits that from the Arrest/Surrender Form filled up by the arresting authority, there are clear observations recording that the petitioners are not dangerous and not likely to commit crime or threatened victim/witnesses if released on bail. They also do not have past criminal record or are

wanted in connection with any other case. As such, there is no impediment in releasing the petitioners on bail having regard to the observations and records maintained by the police.

[4.] The learned counsel further submits that out of the seven prosecution witnesses cited, three witnesses have been examined and one witness has been dropped. What remains is the examination of three prosecution witnesses. By referring to the deposition of PW-1, who is the seizing officer, the learned counsel submits that PW-1 in his cross-examination stated that he did not personally witness the actual recovery of the seized article from the possession of the accused persons by the BSF, who knew that the accused persons possessed the seized article. He also stated that he was not sure whether the seized article actually belonged to the persons accused or not. By furthering referring to the cross-examination of PW-4, the learned counsel submits that according to PW-4 he had no proof that the seized article was Methamphetamine and that he was only told that the seized contraband item was Methamphetamine. Referring to Section 37 of the ND&PS Act, the learned counsel submits that one of the ground for considering the release of the accused on bail is that Court must be satisfied that there are reasonable ground for believing that the accused person is not guilty of such offence and not likely to commit any offence while on bail. He submits that from the evidence of PW- 1 & 4, it can be clearly seen that the said witnesses are not sure about the actual owner of the seized article and moreover, from the observations of the police in the Arrest/Court Surrender Form, it was recorded that the

petitioners are not likely to commit similar offence if granted bail, the petitioners therefore being covered by the said criteria, they should be released on bail.

[5.] The learned counsel further submits that the health conditions of both the petitioners are also not very good. The same can be seen from the certificate issued by the Medical Officer, Central Jail, wherein, an advice has been given in respect of the petitioner No. 1 to go for further investigation at higher centre in view of his kidney problem. As for the petitioner No. 2, he is found to have high blood pressure and require appropriate treatment. He therefore submits that even on this ground, the petitioners may be released on bail. The learned counsel also submits that the object of bail is neither punitive nor preventative. Deprivation of liberty must be considered a punishment, unless it can be required to ensure that an accused person will stand his trial when called upon. In other words, object of bail is to secure the presence of the accused persons. In the instant case, both the petitioners are resident of Dintar Veng, Aizawl and are employed with the State Police and therefore, there can be no apprehension that they will not stand trial. In this connection, the learned counsel relies upon the case of *Sanjay Chandra -Vs- Central Bureau of Investigation, (2012) 1 SCC 40*. He thus submits that the petitioners be released on bail by this Court.

[6.] Ms. Mary L. Khiangte, learned Addl. Public Prosecutor on the other hand submits that the petitioners belong to a disciplined force and that the allegation against them is of a serious nature. Referring to the deposition of PW-3, who is an independent witness, the learned Addl. Public Prosecutor submits that according to the said

witness, the police personnel told the accused persons who were suspected to possess contraband drugs to take out all the hidden articles if any and accordingly, in his presence, the petitioners produced two polythene bags to the police personnel and on opening the same, they found 69 numbers of blue colour plastic sachet and another bundle containing 15 numbers of blue colour sachet. Each of the black and blue colour sachet contained 200 Methamphetamine tablets. On counting all the suspected tablets, the same were found to be 23,800 tablets. Even in the cross-examination, the said witness stated that he saw the recovery and seizure of the seized article made by the police from the possession of the accused persons i.e., the petitioner. She therefore submits that as there are materials available to show that the petitioners are guilty of commission of the alleged offence under the ND&PS Act, they may not be released on bail. In support of her submission, the learned Addl. Public Prosecutor relies upon the case of *Prasanta Kumar Sarkar -Vs- Ashis Chatterjee and Another, (2010) 14 SCC 496* and the case of *Union of India -Vs- Rattan Mallik, (2009) 2 SCC 624*.

[7.] The learned Addl. Public Prosecutor lastly submits that the trial is in progress and as can be seen, only three prosecution witnesses remain to be examined and therefore, pending conclusion of the trial, the petitioners may not be released on bail.

[8.] I have heard the submissions made by the learned counsels for the rival parties and I have perused the materials available on record. It is seen that for one reason or the other, petitioners were given the benefit of interim bail on many occasions. After

completion of the interim bail granted to them, they have both surrendered themselves and are currently in jail. By this bail application, the petitioners have once again prayed for grant of bail to them by invoking Section 439 Cr.PC as well as Section 37 of the ND&PS Act. As per the said provisions, importantly, Section 37 of the ND&PS Act, bail can be granted to accused person by giving opportunity to the Public Prosecutor to oppose the bail and when such opportunity is granted to the Public Prosecutor, 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. In so far as the second part of the condition is concerned, it may be seen that as per the Arrest/Court Surrender Form, there is an indication that the person arrested is not likely to commit offence if released on bail. The same is only a recorded observation as per the police report but it cannot be considered as a guarantee or otherwise that the person will not commit a similar offence if enlarged on bail. In other words, it is only an observation which cannot otherwise bind the court to grant bail.

[9.] Out of the seven cited prosecution witnesses, three witnesses have been examined so far while one witness has been dropped. The learned counsel for the petitioners has pointed out the evidence of PW-1 who in his cross-examination stated that he did not personally witness the actual recovery of the seized article from the possession of the accused person by the BSF, who knew the accused persons possessed the seized article. Further, he is also not sure whether the seized article

actually belonged to the accused persons. It is however seen that in the examination-in-chief of PW-1, PW-1 stated that on 12.02.2021, specific information was received from Inspector (G) Z. Angam of FGT, Aizawl (BSF 'G' Branch) that they had detained two persons who were strongly suspected of possessing contraband drugs within the area of Ramhlun South, Aizawl. In this regard, information report was immediately submitted to the Officer-in-Charge, Special Narcotic Police Station, who then immediately issued authorization letter under Section 41(2) of the ND&PS Act, authorizing PW-1 to conduct search of the suspected person. Accordingly, PW-1 and party left the Police Station towards the place of occurrence. The further contention raised is that as per the version of the PW-4 in his cross-examination, he was unable to prove that the seized article was Methamphetamine but he was told that the same was Methamphetamine. The said deposition in my considered view does not render any assistance to the petitioners for the purpose of grant of bail in as much as PW-4 as a seizure witness is to only witness the seizure. He is not required to prove that the seized materials are banned substance or drugs. At any rate, the seized articles on examination by the FSL were found to be Methamphetamine. The fact also remains that recovery of the contraband substance was made from the possession of the petitioners and the quantity of the alleged recovery is also commercial quantity. Therefore, having regard to the materials available on record, this Court is of the view that the conditions laid down in Section 37(1)(b)(ii) have not been satisfied. Moreover, the trial is also progressing and as such, I find no good ground to grant bail to the

petitioners. Accordingly, the bail application stands rejected.

[10.] It is also made clear that any observation made herein above is solely for the purpose of considering the bail application and should not influence the merit of the case in the trial in any manner.

[11.] The bail application is thus disposed of.

JUDGE

Comparing Assistant