

GAHC030002722023



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

**Case No. : Bail Appln./19/2023**

Smt. Lalrampari  
Bawngkawn, Aizawl, Mizoram

**VERSUS**

State of Mizoram  
Aizawl

**Advocate for the Petitioner** : Mr Ashok Kumar Rokhum

**Advocate for the Respondent** : Ms. Mary Lalruatkimi Kiangte (Addl.PP, Mizoram)

**ORDER**

**B E F O R E**

**HON'BLE MR. JUSTICE NELSON SAILO**

**26.06.2023**

Heard Mr. A.K. Rokhum, learned counsel for the petitioner and Mrs. Linda L. Fambawl, learned Additional Public Prosecutor for the State.

**[2.]** By filing this application under Section 439 of the Cr.PC, the petitioner prays for grant of bail to Smt. Lalrampari, w/o Kaptinthanga, resident of Bawngkawn, Aizawl, Mizoram, who was arrested on 24.10.2022 in connection with seizure of 101 grams of heroin. Excise Case No. Ex.-N 178/2022 was registered under Section 21 (b) of the

ND&PS Act, 1985 and Smt. Lalrampari and another co-accused Zohmingsanga was arrested.

**[3.]** Advancing his argument, Mr. A.K. Rokhum, learned counsel for the petitioner submits that the arrested person has been treated as a foreigner despite the fact that he is in possession of Adhaar card as well as Electoral ID card and Ration card. He submits that the arrested person was arrested at night at about 7:30 p.m. on 24.10.2022 in violation of Section 46 (4) of the Cr.PC. Although it is claimed that permission was accorded for making such an arrest by the Judicial Magistrate, but a copy of the permission available in the charge sheet does not bear any seal of the Court. He further submits that the possession of the alleged heroin said to have been recovered from the arrested person was not a conscious possession and therefore, she could not have been implicated in the case. In support of his submission, the learned counsel refers to the statement of the co-accused person Sh. Zohmingsanga. The learned counsel has also relied upon the Apex Court decision in *Amarjeet Singh vrs. State of Maharashtra* decided on 04.10.2001 and the case No. being *Crl. App No. 1007/2000*. The learned counsel therefore submits that pending conclusion of the trial, the arrested person may be released on bail.

**[4.]** Mrs. Linda L. Fambawl, learned Additional Public Prosecutor, on the other hand, submits that as per the statement of the arrested person herself, it can be seen that she was aware of the fact that the co-accused person hid the alleged heroin in her guest room. Therefore, she cannot say that she was not conscious about the concealment of illegal drugs in her house.

**[5.]** The learned Additional Public Prosecutor further submits that it is clear from the permission given by the Judicial Magistrate for arresting the accused person that an appropriate application for arresting the accused person after sunset and before sunrise on 24.10.2022 was indeed submitted before the Judicial Magistrate. Therefore, there is no question of non-compliance of Section 46 (4) of the Cr.PC.

**[6.]** I have considered the submissions made by the learned counsels for the rival parties.

**[7.]** Coming to the first contention of the petitioner that the petitioner is not a foreigner and that she possesses certain documents to proof that she is an Indian citizen indeed, it may be seen that the charge framed against the petitioner is only under Section 21(b) of the ND&PS Act. It is nowhere revealed in the charge sheet produced by the learned counsel for the petitioner that the arrested person has been booked under the relevant provisions of the Foreigners Act. At any rate, in case of such an eventuality, it is a matter to be decided by the Trial Court during trial. Secondly, it has been contended that the arrested person was arrested at around 7:30 p.m. of 24.10.2022 by not complying Section 46(4) of the Cr.PC. However, it is noticed that permission of arrest of the accused person after sunset and before sunrise under Section 46 (4) of the Cr.PC was granted under the signature of Judicial Magistrate, Aizawl District, Aizawl, wherein the date of such proposed arrest and the name of the accused person has been clearly reflected. The same is a part of the charge sheet and therefore, the doubt raised by the learned counsel for the petitioner about the legality or acceptability of the said document is an issue which can be considered by the learned Trial Court during the trial. Lastly, regarding the possession of the alleged drugs not being in the knowledge of the arrested person, it may be seen that the arrested person has made a statement before the investigating authority which reveals that on 24.10.2022 morning, the brother of the arrested person came to our house and conceal 1 (one) *hawng* of heroin in the guest room of our house. Thereafter, the YMA duty seized the said heroine from her house and the owner of the said heroin is her brother. Although the arrested person may not be the actual owner of the heroin, but the same has been recovered from her house as per her own statement and she was also aware of the fact that it was an illegal drugs. Therefore, it cannot be said that the arrested person had no knowledge about the material being kept in her house to be illegal drugs.

**[8.]** It is submitted at the bar that there are as many as 6 (six) Prosecution Witnesses to be examined by the prosecution and so far 2 (two) Prosecution Witnesses has been examined. Having regard to the manner in which the trial is progressing, Court is of the considered view that no case for granting of bail at this stage is made out by the petitioner. Accordingly, the bail application stands rejected. It is however made clear that any observation that is being made herein is only for a purpose of considering the instant bail application and shall not influence the Trial Court in any manner in coming to its own conclusion. Before parting with the records, the case of Amarjeet Singh Supra has also been perused and it is seen from the facts and circumstances of that case that the claim for possession of the alleged drugs not being conscious was considered by the High Court as well as the Apex Court only after the trial had been completed and the accused person convicted. In the present case, as already noticed herein above, trial is in progress and therefore, the question that the possession of the alleged drugs was not a conscious possession is open for the arrested person to agitate before the Trial Court. Hence, the said authority is found to be not applicable.

**JUDGE**

**Comparing Assistant**