

GAHC030002912023



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

Case No. : Bail Appln./20/2023

Smt. Lalnunkimi and 2 Ors.
Tahan, Myanmar

2: Smt. Ngunneikili

3: Sh. A. Thang @ L. Thang Syan Aun

VERSUS

State of Mizoram
Aizawl

Advocate for the Petitioner : Mr. Lalpianfela Chawngthu

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

ORDER

B E F O R E
HONOURABLE MR. JUSTICE NELSON SAILO

17.07.2023

Heard Mr. Lalpianfela Chawngthu, learned counsel for the petitioners and
Ms. Mary L Khiangte, learned Addl. Public Prosecutor for the State.

[2.] By filing this application under Section 439 Cr.P.C, the petitioners pray for grant of bail to them. The petitioners were arrested on 01.02.2023 for alleged possession of 217 grams of heroin and in this connection, Excise & Narcotics Case No. Ex. No. 32/2023 dated 01.02.2023 under Section 21(b) of the ND&PS Act, 1985 was registered. Upon completion of the investigation, Excise authorities have filed the Charge-Sheet dated 25.03.2023 before the learned Trial Court. It is stated at the bar that the matter is now pending for consideration of charge.

[3.] A perusal of the complaint sheet/charge-sheet shows that as many as 6 (six) prosecution witnesses have been cited to prove the charge against the petitioners and that the Investigating Officer, upon finding a prima facie case against the present 3 (three) applicants as well as one Mr. David Khiang for violation of Section 21(b) of the ND&PS Act as well as Section 8(c) of the same Act, has filed the charge-sheet.

[4.] Mr. Lalpianfela, learned counsel submits that the alleged heroin was not seized from the possession of the applicants and that the same in fact belongs to Mr. David Khiang. To substantiate his submission, the learned counsel has drawn the attention of this Court to the statement of the accused Mr. David Khiang as recorded by the investigating authority. The learned counsel further submits that as per the Forensic Science Laboratory (FSL) report, the weight of the samples drawn for examination ranges from 3.3 grams to 4.9 grams, which has been marked as 19 separate exhibits in all. However, as per the list of samples drawn, it has been shown that from each of the seized packets totaling 19 in all, a total of 12 grams heroin each has been drawn from each packet. In other words, it means that 12 grams of suspected heroin from each of the 19 packets which comes to a total of 228 grams. However, as per the charge-sheet, only 217 grams of heroin has been recorded as seized. Therefore, there being

clear discrepancy in the weight of the seized article, the applicants appeared to have only been framed by the investigating agency.

[5.] The learned counsel further submits that as per the seizure memo and also the charge-sheet, the seized articles were seized at 11:50 AM on 01.02.2023 but however, as per the go-down receipt issued by the Officer-in-Charge of ND&PS go-down of the Excise & Narcotics Department, the date and time of receipt of the alleged heroin is 1:40 AM on 01.02.2023. It, therefore, appears that the seized article was received by the Officer-in-Charge of ND&PS go-down even before the same was seized by the investigating authority. Because of these discrepancies, bail should be granted to the applicants as no prima facie case has been made out against them for violation of the relevant provisions of the ND&PS Act.

[6.] This Court vide Order dated 21.06.2023 while issuing notice to the State had directed the Addl. Public Prosecutor to obtain instructions in the matter including the reason as to why the applicants who admittedly appeared to be Myanmarese nationals have not been booked under the Foreigners' Act. Today, Ms. Mary L Khiangte, learned Addl. Public Prosecutor submits that she has not received any written instructions despite communication of this Court's order but she submits that she has been informed over phone that the reason why the applicants have not been booked under the Foreigners' Act is because whenever the investigating authority raises the plea that the apprehended persons being foreign nationals should be booked accordingly under the Foreigners' Act, the Court concerned does not take cognizance of the same and therefore, the investigating authorities have stopped raising such plea. The learned Addl. Public Prosecutor in respect of the discrepancy of the weight of the seized article submits that she has been informed that the room temperature at the FSL

Laboratory is different from the temperature at the time when the seized articles are packed and sealed. Therefore, this has resulted in the discrepancy of weight of the seized article. She submits that at any rate, the same cannot affect the case of the prosecution that the seized articles were possessed by the persons concerned in violation of the provisions of the ND&PS Act and therefore liable to be prosecuted.

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

[8.] Although, the learned counsel for the applicants has tried to impress upon the Court that the seized articles were not seized from the possession of the applicants but upon going through the statements of Mr. David Khiang, which was recorded by the investigating authority during the investigation, it clearly transpires that all the 3 (three) applicants are connected and are aware about the seized articles. In fact, the applicant No. 3 had assisted in disposing some amount of the alleged heroine which was procured by one Smt. Nuni from Tahan for sale. This Smt. Nuni apparently appears to be the applicant No. 1 while the applicant No. 2 is her younger siblings. Although the alleged contraband substance may not have been physically recovered from the physical possession of the applicants but the fact remains that all of them are in the knowhow of the same and therefore, they have contravened the relevant provisions of the ND&PS Act. As such, the plea of the applicants about the alleged contraband substance not being physically recovered from their physical possession and therefore that they are not involved in the matter cannot be accepted. The further contention of the learned counsel for the applicants that there are serious discrepancies in the weighment of the seized article and the actual time of seizure of the same. However, in the considered view of this Court, the same can be a raised by the

applicants at the time of charge consideration. The only consideration of this Court at this stage is regarding the release of the applicants on bail pending initiation and conclusion of the trial. As already noted herein above, the investigating authority has already filed the charge-sheet and that charge is to be considered on any day now and therefore having regard to the nature of the accusation and the fact that the applicants appear to be foreign nationals, this Court is not inclined to grant bail.

[9.] Although the State were given time to file objection to the bail application vide Order dated 21.06.2023 but the same has not been filed. The learned Addl. Public Prosecutor has only made oral submissions as received by her over phone. The submissions made having not been put down in the form of written objection, this Court is inclined to accept the same.

[10.] Be that as it may, on due consideration of the bail application on its own merit, the same stands rejected. It is however made clear that the observations which are made in this order is only for the purpose of considering the instant bail application and should not affect the merit of the case in any manner before the Trial Court.

JUDGE

Comparing Assistant