

GAHC030003212023



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

Case No. : Bail Appln./24/2023

Smt. Lalthanmawii and 2 Ors.
D/o H. Kapthianga (L),
R/o Chhing Veng, Aizawl 2: Shri Zaukhan

3: Linda Niangzalun

VERSUS

The State of Mizoram
Aizawl, Mizoram

Advocate for the Petitioner : Mr. Lalpianfela Chawngthu

Advocate for the Respondent : Mrs. Linda L Fambawl (Addl.PP, Mizoram)

ORDER

Date : 26-06-2023

BEFORE
HONOURABLE MR. JUSTICE NELSON SAILO

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.PC, the petitioners pray that they may be granted bail pending conclusion of the trial, which is being set out against them. According to the petitioners, they were arrested on 21.03.2023 in

connection with the recovery of 100 grams of suspected heroin. 29 grams of suspected heroin was recovered from petitioner No. 2 while 71 grams of suspected heroin was recovered from petitioner No. 1.

3. During the investigation, the Excise & Narcotics Department through their Investigating Officers recorded the statements of the petitioners while sending the seized article for forensic examination. Upon conclusion of the investigation, the Investigating Authority has submitted the Charge-sheet before the Trial Court on 11.05.2023 by stating that a prima facie case under Section 21(b) of the ND&PS Act, 1985 was found well established against the petitioners and as many as 9 prosecution witnesses have been cited. It is submitted at the bar that the case is due for charge consideration today before the Trial Court.

4. Having regard to the submission made by the learned counsel for the petitioners, this Court vide Order dated 19.06.2023 had called for the Medical Report on the petitioner No. 1 from the Jail Authorities. Accordingly, Ms. Mary L. Khiangte, learned Addl. Public Prosecutor has produced the Medical Report on the health condition of petitioner No. 1 recorded by the Medical Officer, Central Jail.

5. Mr. Lalpianfela Chawngthu, learned counsel for the petitioners submits that as the Charge-sheet has already been submitted by the Investigating Authority, there is no requirement for the petitioners to be in custody any longer. The petitioners, in fact have been co-operating with the entire investigation and that they will not flee from justice in the event they are released on bail but participate in the trial proceedings. The learned counsel further submits that as many as 9 prosecution witnesses have been cited in the Charge-sheet and

therefore, it is not known how long the trial proceedings will last and as such, the prolonged custody of the petitioners without any proof of having committed the alleged offence violates their Fundamental Rights under Article 21 of the Constitution of India. As such, they should be released on bail pending conclusion of the trial.

6. The learned counsel further submits that in respect of the petitioner No. 1, she is aged about 63 years and having certain health complications. He submits that this fact can be appreciated from the report submitted by the Medical Officer of Central Jail. The Medical Officer has also recommended that she should go for upper GI Endoscopy for her Gastritis and that the same is not possible while being lodged in jail. He therefore submits that the petitioner No. 1, on account of her health condition and because of her age should be released on bail.

7. The learned counsel has also drawn the attention of this Court to the statements made by the petitioner No. 1 before the Investigating Authority, wherein she had stated that she has little understanding about the risk and consequences of possessing the illegal drugs and that it was solely on account of the intention to help, the co-accused person, namely Smt. Linda Niangzaluni, who happens to be the elder sister of her brother-in-law. Similarly, referring to the statement of Sh. Zaukhana, petitioner No. 2, the learned counsel submits that it is clear from his statement that the heroin did not belong to him but belong to the petitioner No. 3, who was having a chronic leg injury. According to him, he had nothing to gain from delivering the heroin but it was only a means to assist his sister, Smt. Linda Niangzaluni on account of her health condition. The learned counsel thus submits that in view of the above grounds, the

petitioners may be released on bail.

8. Ms. Mary L. Khiangte, learned Addl. Public Prosecutor on the other hand submits that 100 grams of heroin in all was seized from the possession of the petitioner Nos. 1 & 2 and from the evidence collected during the investigation, the same belonged to the petitioner No. 3. As for the petitioner Nos. 1 & 2, they were aware about the seized article being a banned and illegal substance. Therefore, even though they may not be the owner of the seized article as claimed but they will still be liable to be prosecuted under the relevant provisions of the ND&PS Act. She also submits that in respect of the health condition of the petitioner No. 1, the Jail Doctor has certified that he was suffering from Gastritis, Hypertension, peripheral neuropathy, Type 2 Diabetes Mellitus (Uncontrolled), presbyopia and mild anemia. She submits that for the said ailment, the petitioner No. 1 can be easily treated and even if there is a requirement for Endoscopy for her Gastritis, she can be referred to the Government Hospital for the procedure. In other words, the learned Addl. Public Prosecutor submits that the ailment of the petitioner No. 1 cannot be said to be of a very serious nature so as to require her to be on bail to get medical treatment. She thus submits that under the facts and circumstances, the bail application may be rejected by this Court.

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

10. The contention advanced by the learned counsel for the petitioners is that Charge-sheet has already been submitted and therefore, the petitioners may no longer be required in the matter as investigation has been completed. This

submission, in my considered view has to be appreciated along with the nature of allegation made against the petitioners. The materials on record go to show that a total amount of 100 grams of heroin has been recovered from the possession of the petitioner Nos. 1 & 2. The investigation conducted further reveals that the seized heroin belongs to the petitioner No. 3, who had procured the same for sale on profit. In such process, she appears to have utilized the assistance of the petitioner Nos. 1 & 2. Even if the alleged seized heroin do not belong to the petitioner Nos. 1 & 2 but the fact remains that possession or conscious possession of the alleged drugs by itself is punishable under Section 21 of the ND&PS Act. Section 54 and Section 35 of the same Act provides that in trials under the Act, unless and until the contrary is proved, a presumption is to be drawn that the accused person has committed an offence under the Act. It is for the accused person to establish that he or she has no such mental state for commission of the alleged crime and that there was no conscious possession of the same. Therefore, the materials available on record, prima facie having shown that there are materials to proceed against the petitioners, the Investigating Agency had filed the Charge-sheet to prosecute the petitioners. Therefore, unless there is a trial against the petitioners on the basis of the materials available, it cannot be presumed that the petitioners are not guilty of the offences that are charged with, so as to consider their release on bail at this stage.

11. The learned counsel for the petitioners has also raised concerned about the health condition of the petitioner No. 1. In order to appreciate her exact status, a report from the Medical Officer of Central Jail was requisitioned and the report goes to show that the petitioner No. 1 is having some health issues as already reflected herein above. For such ailment, the Jail Doctor has also given his

prescription, which can be seen in the treatments/advice column of the Medical Examination Form produced by the learned Addl. Public Prosecutor. Therefore, primarily it appears that the health concerned raised by the learned counsel in respect of the petitioner No. 1 can be addressed even as the petitioner No. 1 is in jail. However, in respect of the advice to go for Endoscopy for her Gastritis, the same can be taken care of by the Jail Authorities as and when the situation demands by referring her case to the Medical Superintendent, Civil Hospital, Aizawl. The Medical Superintendent, upon being given such requisition, may take necessary steps to get the endoscopy of the petitioner done at the State's expense.

12. Thus, having regard to the nature of the accusation against the petitioners and having regard to the fact that Charge-sheet has already been submitted and trial is due to commence shortly, this Court is of the considered view that the Bail Application cannot be allowed and accordingly, the same stands rejected.

13. A photocopy of the Medical Report submitted by the learned Addl. Public Prosecutor be retained in file and the original Medical Report be returned back.

JUDGE

Comparing Assistant