

GAHC030003382023



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

Case No. : Bail Appln./26/2023

Evy Lalramhluni
W/o Gospel Lalruatfela
R/o Venghlun, Thenzawl, Serchhip District.

VERSUS

The State of Mizoram
Aizawl

Advocate for the Petitioner : Mr. Jonathan Lalrintluanga

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

ORDER

Date : 17-07-2023

BEFORE
HONOURABLE MR. JUSTICE NELSON SAILO

Heard Mr. Jonathan Lalrintluanga, learned counsel for the applicant and Ms. Mary L. Khiantge, learned Addl. Public Prosecutor for the State.

2. By filing this application under Section 437/439 Cr.PC read with Section 37 of the ND&PS Act, 1985, the applicant prays for her enlargement on bail. The main grounds taken by the applicant is that she is not involved in the alleged recovery of 528 grams of heroin and that she has severe medical conditions, which requires proper treatment outside jail. In other words, the applicant

contends that she is suffering from Cervical Spondylosis, which requires proper treatment including Physiotherapy, which is not possible while being lodged in jail.

3. Mr. Jonathan Lalrintluanga, learned counsel submits that the applicant was arrested on 12.12.2021 in connection with alleged recovery of 528 grams of heroin from her possession. Following registration of Excise Case No. N-141 of 2021 dated 13.12.2021 under Section 21(c) of the ND&PS Act, the Excise Authorities have conducted investigation and consequently file Charge-sheet No. Ex-(ANS) No. 24/21 dated 08.03.2022. He submits that as many as 6 Prosecution Witnesses have been cited in the Charge-sheet and that the applicant also has witnesses to examine in her defence. The learned counsel submits that due to the persisting ailment of the applicant, the applicant was granted temporary bail by the learned Trial Court vide Order dated 26.04.2022 w.e.f. the date of the order upto 27.05.2022. Later on, the temporary bail was extended upto 13.06.2022. When the matter was taken up on 13.06.2022, the applicant was not granted any further bail and since then, she is in custody.

4. The learned counsel submits that although the applicant tried to secure further bail by filing Bail Application No. 1420/2022 but the same was rejected vide Order dated 13.12.2022. Since the applicant continues to suffer from neck discomfort and pain on account of her having Cervical Spondylosis, she was referred to Ebenezer Medical Centre and as per the OPD Card dated 13.03.2023, the applicant was prescribed medication for her ailment. He therefore submits that pending conclusion of the trial, the applicant may be released on bail.

5. Ms. Mary L. Khiangte, learned Addl. Public Prosecutor on the other hand

submits that the applicant appears to be a habitual offender and the same can be seen from the Complaint-sheet/Charge-sheet submitted by the Excise Authorities. She submits that the recovery made from the possession of the applicant being 528 grams is a commercial quantity and the punishment prescribed for possession of commercial quantity includes imprisonment for not less than 10 years along with fine, the applicant may not be released on bail. She submits that as per the instructions given to her and also as admitted at the bar, the examination of the Prosecution Witnesses is over and now, as many as 2 Defence Witnesses have been examined. Since then, trial is in the verge of conclusion and therefore, the instant Bail Application may be rejected.

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

7. From a perusal of the Charge-sheet submitted by the Excise Authorities, it is seen that from the arrest of one Smt. Lalhlimpuii alias Puii of Luangmual, Aizawl and from the Phone call made to one Smt. Vanlalzapi, it came to light that the present applicant was in possession of large quantity of heroin and that the same was due to be transported for transaction at the outskirts of Thenzawl town. Accordingly, the Excise Personnel, after writing down the information received in writing proceeded to the designated place where the transaction was to happen and in the process, recovered 504 grams of heroin kept in 40 soap cases concealed in two black polythene hanging at the rear grab rail of Vespa Scooter owned by the applicant and was driven by a young boy of 12 years. Later on, another 24 grams of heroin was seized, which was concealed under the bushes near the pig sty of the applicant. The applicant was accordingly arrested while the young boy was handed over to the Juvenile Justice Board for

appropriate action. The seized articles on being examined in the FSL has turn out to be heroin of 79% w/w purity. Having regard to the materials available on record, it therefore appears that prima facie the applicant has violated the relevant provisions of the ND&PS Act and therefore, liable to be prosecuted.

8. The health issue raised by the applicant has also been considered. As already stated, the applicant was granted temporary bail on account of her health w.e.f. 26.04.2022 upto 13.06.2022. Her bail application came to be rejected on 13.06.2022 and no further extension of the temporary bail was granted. However, the applicant has not annexed copy of the Order 13.06.2022 passed in the said bail application. The second bail application submitted by the applicant mainly on health grounds was also duly examined by the learned Trial Court but the learned Trial Court found no reason to grant bail. Therefore, since 13.06.2022, the applicant is in custody. Due to the ailment suffered by the applicant, she was referred to Ebenezer Medical Centre and as per the Medical Examination Report dated 31.03.2023, the following in question has been recorded.

“Posterior central protrusion of the C5-C6 disc causing mild spinal canal stenosis with thecal indentation.”

9. However, it is seen that no line of treatment has been mentioned in the medical examination. Mr. Jonathan Lalrintluanga, learned counsel otherwise submits that the treatment which is required to be taken by the applicant otherwise is Physiotherapy and to avail that benefit, the applicant may be granted bail. However, considering the nature of the ailment of the applicant and the fact that the trial is at the advance stage and is in the verge of

conclusion since the prosecution has already led their evidence while the defence have admittedly examined as many as 2 witnesses and also keeping in view the gravity of the offence alleged have been committed, this Court is not inclined to grant bail.

10. Accordingly, the Bail Application stands rejected. It is however provided herein that should the applicant require proper medical treatment on account of her ailment and upon due certification by the Jail Doctor, the State Authorities to ensure that she gets proper medical treatment.

JUDGE

Comparing Assistant