

GAHC030003492023



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

Case No. : Bail Appln./27/2023

Smt. Edenmawii
D/o Zaawia
R/o New Ngharchhip, Mizoram.

VERSUS

The State of Mizoram and 2 Ors.
r/b the Secretary to the Govt. of Mizoram, Excise and Narcotics Deptt., Mizoram,
Aizawl. 2:The Commissioner
Excise and Narcotics Department

3:Sh. S.I. R. Lalrinsanga
Complainan

Advocate for the Petitioner : Ms. Jacinta Zothanmawii

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

BEFORE
HONOURABLE MRS. JUSTICE MARLI VANKUNG
ORDER

Date : 17-07-2023

Heard Ms. Jacinta Zothanmawii, learned counsel for the petitioner along with Mrs. Linda L. Fambawl, learned Additional Public Prosecutor for the State respondents.

This petition is filed under Section 27 of the ND&PS Act r/w Section 439 Cr.P.C., wherein the learned counsel for the petitioner has prayed for the release of the

petitioner on bail.

Ms. Jacinta Zothanmawii, learned counsel for the petitioner submits that the petitioner was arrested on 14.10.2022 by the Excise & Narcotics personnel in connection with Excise Case No. 162/2022 dated 15.10.2022 under Section 22(c) of the ND&PS Act, for alleged possession of 6.122 kg of red and green tablets suspected to be Methamphetamine. The learned counsel submits that the Investigating Officer has submitted the charge sheet before the Trial Court on 10.11.2022 and the case is registered as Criminal Trial (Ex) No. 1790/2022, wherein the trial has begun and is at present at the stage of taking evidence.

The learned counsel for the petitioner submits that the petitioner is entitled to be released on bail since the petitioner is a first time offender and has no previous conviction under any Court of law. The State respondents failed to comply with Section 154 Cr.P.C. by registering the case after a delay of almost 12 hours since the petitioner was arrested on 14.10.2022 at about 3:00 PM, while the case was registered on 15.10.2022. The learned counsel further submits that at the time of the arrest of the petitioner, there was no Women Police Constable present which is not in compliance with Section 46 of the Cr.P.C. In support of her submission, the learned counsel has cited the decision of the Bombay High Court in ***Christian Community Welfare Council of India & Anr. Vs. Government of Maharashtra & Anr.***, reported in ***1994 Mh.L.J.***, [Para 29 (vii)]. The learned counsel further submits that Section 50 of the ND&PS Act was not followed at the time when search was conducted at the P.O since the search and recovery of the alleged seized item was not made in the presence of a Magistrate or Gazetted Officer. It is further submitted by the learned counsel that the petitioner was suffering from Hepatomegaly with Liver parenchymal Disease and Uterine Fibroid which required immediate medical treatment. The learned counsel also submits that the main accused namely, Sh. Richard Lalhmingmawia is

presently out on bail.

Mrs. Linda L. Fambawl, learned Additional Public Prosecutor, on the other hand submits that, no provisions of law has been violated in the arrest of the petitioner. The petitioner was arrested on 14.10.2022 at 3:00 PM when she was found to be in possession of the seized article consisting of 6.122 kg of suspected Methamphetamine tablets kept in a black and grey colour sky bag. The arrest was made immediately to prevent her from escaping and no Women Police Constable was required then, since no bodies search was required to be conducted at the time of arrest. She further submits that there was no undue delay in registering of the case once information was received.

The learned Additional Public Prosecutor further submits that even though the petitioner is said to be suffering from Hepatomegaly with Liver parenchymal Disease and Uterine Fibroid, it is not shown that it is life threatening or that the petitioner required immediate surgery. It appears that the said illness of the petitioner can be treated through medication. The learned Additional Public Prosecutor also submits that the co-accused, Sh. Richard Lalhmingmawia was released on bail only due to the fact that he was said to be suffering from TB and it was not safe to have him under judicial custody along with the other inmates in the Jail. The learned Additional Public Prosecutor further submits that the bail application has been made under Section 37 of the ND&PS Act r/w Section 439 Cr.P.C. and therefore, the seized articles are of commercial quantity and the petitioner has failed to show that *prima facie* the petitioner is innocent of the charge under Section 22(c) ND&PS Act. For the above reasons, she submits that there was no grounds for release of the petitioner on bail at this stage since the case is at its evidence stage.

Having heard the submissions made by both the parties, this Court finds that

since the petitioner was arrested on 14.10.2022 at around 3:00 PM, which is before sunset and it is also seen that there is no requirement for any body search since the seized article was said to be recovered from a black and grey colour sky bag. Thus absence of Women Police Constable at the time of arrest under such circumstances cannot be a sole ground for granting bail. This Court also finds that there is no undue delay in the registration of the case on receiving information on 14.10.2022. Whether the provisions of Section 50 of the ND&PS Act has been followed is required to be looked into after recording due evidence in the Trial Court. With regards to the health situation of the petitioner, a perusal of the medical reports/documents submitted by the petitioner nowhere indicates that the petitioner is in requirement of immediate surgery or that she is not fit to be kept in judicial custody.

For the above reasons, and also considering the fact that there is no submission made by the learned counsel for the petitioner with regards to the innocence or none-involvement of the petitioner in the case, wherein, she has been charged under Section 22(c) of the ND&PS Act, this Court finds no reason to grant bail to the petitioner at this stage. Accordingly, Bail Application No. 27/2023 stands dismissed and disposed of.

JUDGE

Comparing Assistant