

GAHC030004502023



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

Case No. : Bail Appln./32/2023

Sh. Basit Uddin
Kabari bond, Patharkandi, Karimganj District, Assam

VERSUS

The State of Mizoram
Aizawl

Advocate for the Petitioner : A H Borbhuiya

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

ORDER

B E F O R E

THE HON'BLE MR. JUSTICE NELSON SAILO

ORDER

12.09.2023

Heard Mr. A.H Borbhuiya, learned counsel for the petitioner and Mr. C. Zoramchhana, learned Public Prosecutor, Mizoram for the respondent. By filing this application under Section 37 of the ND&PS Act read with Section 439 of the Cr.P.C, the petitioner prays for his release of bail.

[2.] Brief facts of the case as presented by the petitioner is that he is the owner of

TATA Yodha vehicle B/R No. AS 24 AC 2399 which is driven by one Mr. Sams Uddin. His vehicle and the driver was detained by the Police on 23.01.2023 while it was parked in the road side of Lengte road, ISPAT junction. The Police recovered 113 soap cases containing reddish and brownish powder suspected to be heroin No. 4 kept in a nylon bag which was hidden in the road side. For the said recovery, the Police arrested the petitioner and his driver.

[3.] The learned counsel submits that recovery of the alleged drugs was not from his possession and therefore, the Police could not have arrested him for such recovery. The learned counsel further submits that the petitioner is an HIV patient requiring regular medical treatment. Therefore, being lodged in jail, the petitioner is unable to receive proper treatment. The learned counsel further submits that the petitioner since his arrest on 23.01.2023 is lodged in Jail and he being the sole bread earner, his family is facing immense hardship. Even the trial which has commenced, has not progressed much as the prosecution witnesses have failed to turn up despite being summoned. He, therefore, submits that the petitioner, pending conclusion of the trial, may be released on bail.

[4.] Mr. C Zoramchhana, learned Public Prosecutor, on the other hand, submits that the alleged substance recovered has turned out to be heroin of 76% w/w purity and a commercial quantity. Since the punishment prescribed under Section 21(c) of the ND&PS Act is very severe, the petitioner may not be released on bail. He also submits that the trial before the Court concerned is in progress and that the petitioner being a resident of the neighboring State, there is also a chance of him to jump bail and not co-operating with the trial. He, therefore, submits that the bail application may be rejected.

[5.] I have considered the submissions made by the learned counsels for the rival parties and I have perused the materials available on record.

[6.] The materials on record go to show that recovery made was 145 grams of suspected heroin kept in 113 soap cases. The same on being sent for FSL examination turned out to be heroin of 76% w/w purity. The learned counsel for the petitioner has contended that the alleged contraband substance has not been recovered from his possession and therefore, he is not liable to be prosecuted under the relevant provisions of law. However, upon perusal of the charge-sheet, it is seen that the driver of the vehicle concerned Sams Uddin had admitted before the Police that he was transporting the contraband substance from Biate village and that the same was kept hidden at the road side near ISPAT junction by the vehicle owner, which is no other than the present petitioner himself. He also stated that two other persons namely; Hussein and Gyas were also involved in the case. However, Hussein and Gyas has not been found and arrested and it is only the petitioner and the driver Sams Uddin who had been arrested in connection with the said recovery. Therefore, there appears to be a prima facie case against the petitioner for his involvement in the recovery of the alleged contraband substance. It is also submitted at the bar that the trial is in progress and out of the 9 (nine) prosecution witnesses, prosecution witnesses Nos. 1 to 3 have been summoned and in fact, the prosecution witness No. 3 has been summoned to give his evidence before the Trial Court today. Therefore, upon over all consideration of the case, this Court is not inclined to grant bail to the petitioner.

[7.] As submitted by the learned counsel for the petitioner, the petitioner is a HIV patient and that he has been taking treatment for his ailment since 11.10.2021 as can be seen from the Antiretroviral Treatment Record annexed by the petitioner at Annexure-V (page-23). Considering the same, it is hereby provided that the jail authorities shall ensure that the petitioner receives proper treatment for his ailment while lodged in jail.

[8.] Further, the observations made in the instant bail application is only for the purpose of considering the bail application. The same should not be reckoned for the

trial proceedings which should otherwise be disposed of on its own merit.

[9.] With the above observations and directions, the bail application is disposed of.

JUDGE

Comparing Assistant