

GAHC030004642023



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

**Case No. : Bail Appln./38/2023**

ZD Lalchhuanawma  
s/o ZD Lalsanglura  
R/o Electric Veng, Lunglei, Mizoram

VERSUS

The State of Mizoram  
Aizawl

**Advocate for the Petitioner** : Mr. Jordan Rohmingthanga  
**Advocate for the Respondent** : P.P./Addl.PP, Mizoram

**BEFORE**  
**HONOURABLE MRS. JUSTICE MARLI VANKUNG**  
**ORDER**

**Date : 22.09.2023**

Heard Mr. Jordan Rohmingthanga, learned counsel for the applicant/petitioner along with Ms. Mary L. Khiangte, learned Additional Public Prosecutor for the State respondent.

**2.** This is an application filed under Section 439 Cr.P.C. r/w Section 482 and Section 37 ND&PS Act for setting aside the impugned Order dated 08.08.2023, passed by the learned Special Court ND&PS Act in Bail Application No. 1363/2023 in Criminal Trial

No. 1187/2023, Ref: Bawngkawn P.S. Case No. 62/2023 under Section 21(c)/25/29 ND&PS Act.

**3.** Mr. Jordan Rohmingthanga, learned counsel for the petitioner submits that the petitioner is innocent of the offence under Section 21(c)/25/29 ND&PS Act and has been wrongly implicated for the seizure of 501 grams of suspected Heroin on 14.01.2023. He submits that when the 501 grams of suspected heroin was seized on 14.01.2023, the petitioner along with the co-accused were travelling back to Lunglei from Aizawl, when they were illegally detained by one Vaivakawn PS staff in plain clothes near Bawngkawn – Sairang road. He submits that on the seizure of the seized suspected Heroin, it is seen from the documents and the charge sheet submitted that Section 42(1) and 42(2) of the ND&PS Act has not been complied with. He submits that as per Section 42(2) of the ND&PS Act, the report of the seizure contraband substance is to be submitted before the next superior Officer within 72 hours of the seizure. However, on perusal of the information report dated 14.01.2023, it is seen that the information report was made by an Inspector, Officer-in-charge, Vaivakawn Police Station, Aizawl, Mizoram and it was duly received by the Officer-in-charge, Bawngkawn Police Station, Aizawl, Mizoram dated 14.01.2023. He submits that as per the Mizoram Police Manual, 2005, the Officer-in-charge of Bawngkawn Police Station, Aizawl, Mizoram will be of the same rank as Officer-in-charge of Vaivakawn Police Station, Aizawl, Mizoram and therefore, this is a non-compliance with Section 42(2) of the ND&PS Act, the Officer-in-charge, Bawngkawn P.S. not being a Superior Officer to

whom the information report was to be submitted. He submits that the report should have been submitted to the Sub-Divisional Police Officer, who is one rank above the rank of an Inspector. Thus, the petitioner is liable to be granted bail for non-compliance with the mandatory provision of Section 42(2) of the ND&PS Act. The learned counsel submits that the provisions of Section 57 of the ND&PS Act was therefore also not followed. In support of his submission, he has relied on the judgment of the Apex Court in *Sarija Banu alias Janarthani alias Janani and another Vs. State through Inspector of Police*, reported in (2004) 12 SCC 266 para 6 & 7 where it was held that: "the compliance with Section 42 is mandatory and that is a relevant fact which should have engaged the attention of the Court while considering the bail application."

**4.** The learned counsel for the petitioner further submits that the petitioner has been falsely implicated since there are inconsistencies in the colour of the seized articles. In the statement of the complainant, the colour of the powder suspected to be heroin is stated to be white powder, while in the charge sheet the colour of the seized contraband substance is stated to be orange colour powder and in the inventory prepared it has been stated to be white and brown colour. These discrepancies in the colour of the SA make the prosecution case doubtful. The learned counsel also submits in the charge sheet submitted, it was stated in the beginning that the seized contraband heroin was stuffed in 40 soap boxes and further concealed amongst the apple fruits which were packed in three separate boxes. However, on

perusal of the seizure memo nothing is mentioned about the boxes. He submits that the box in which the seized contraband substance were kept should have been seized. He also submits that in the seizure memo when the contraband substances were seized, no seal was made and no seal was affixed on the seized article nor was it sent to FSL along with the seized article, which puts a doubt on the sanctity of the seized article sent to the FSL. In support of his submission, he has cited *State of Rajasthan Vs. Gurmail Singh*, reported in 2005 (3) SCC 59 (para 3), *Bhim Ram & Ors. Vs. State of Assam*, reported in 2012 (1) GLT 416 (para 13 & 14).

**5.** The learned counsel has also led the Court to the Test Memo by the Officer-in-charge, Bawngkawn Police Station, wherein at Serial No. 4, the description of the weight of sample was noted as "Quantity about 5 grams of suspected heroin". However, in the FSL report dated 16.02.2023 in the description of the exhibits which consists of 40 exhibits packed and sealed in polythene packets, it was found that in the 40 exhibits, each packet varied in the weight weighing between 2.9 grams to 5.3 grams. The learned counsel therefore submits that the packets sent to the FSL could not be packets mentioned in the Test Memo. In support of his submission, he has cited the decision of the Apex Court in *Noor Aga Vs. State of Punjab*, reported in (2008) 16 SCC 417 (para 97), *Percept Advertising Ltd. Vs. M. Ravindran*, reported in 2003 SCC online SC 324.

**6.** The learned counsel has also submitted that, no previous conviction against the accused is proved in the Arrest Form dated 17.01.2023, it is shown that the petitioner

is not having any past criminal record, he is not likely to escape bail and if released on bail, is not likely to commit crime or threaten victims/witnesses.

**7.** For the above reasons, the learned counsel has prayed that the petitioner may be released on bail and the Order dated 08.08.2023 passed by the learned Special Court, ND&PS Act in Bail Application No. 1363/2023 be set aside.

**8.** Ms. Mary L. Khiangte, learned Additional Public Prosecutor, on the other hand submits that even though the seized contraband substance was seized from the private vehicle of the co-accused, it was seized in a public market place and therefore is a public place under section 43 ND&PS Act, thus, the provisions of Section 42, ND&PS Act, need not be followed. She also submits that even if the provisions of Section 42 is required to be followed in the instant case, there is no such violation of Section 42 of ND&PS Act, since a written report was made by the Inspector, Officer-in-charge, Vaivakawn Police Station, Aizawl, Mizoram on the same day itself, and sent to the Officer-in-charge, Bawngkawn Police Station, therefore, it appears that the Officer-in-charge, Bawngkawn Police Station, Aizawl, Mizoram is superior to the Reporting Officer. She has prayed that this may be clarified during trial before the Trial Court. The learned Additional Public Prosecutor further submits that, from the charge sheet and the statement of the petitioner, the co-accused and other witnesses recorded under Section 161 Cr.P.C. during the investigation of the case, it is clear that the present petitioner is guilty of the offence under Section 21(c)/25/29 ND&PS Act.

Wherein the petitioner had procured the contraband substance from the person named, Tete of Tiau and which was kept in the vehicle of the petitioner, who was to travel to Lunglei from Bawngkawn to Falkland, World Bank Road, when he was intercepted and the seized articles were thereafter seized from his vehicle. The learned Additional Public Prosecutor also submits that it is not necessary to seize the boxes in which the seized articles were kept, since the seized articles were kept in 40.nos. of soap case packed in polythene packets.

**9.** The learned Additional Public Prosecutor also submits that on 14.01.2023, as soon as the contraband substances were seized, the samples were drawn and sealed before the Judicial Magistrate 1<sup>st</sup> Class on the same day itself. She further submits that the difference in the quantity of the packed samples which is found in some cases to be less than 5 grams and in some a bit more than 5 grams does not really make much difference since the difference is only marginal and the instruments used for weighing at the time of seizure may not be absolutely accurate. It is mentioned that the seized samples weigh about 5 grams and not exactly 5 grams. She also submits that with regards to the difference in the colours of the S.A, which are stated to be brown, white and orange, this depends on the person mentioning the colour as perceived by the person, which can be different from person to person.

**10.** The learned Additional Public Prosecutor further submits that the seized contraband substance is of huge quantity and considering the harmful effect of the

seized articles on the society, there is grave danger that the petitioner would commit similar offence while on bail. She submits that the prosecution evidence established that the petitioner is guilty of the offence and there is every likelihood that he would commit similar offences if released on bail at this stage.

**11.** Mr. Jordan Rohmingthanga on rebuttal submits that since the seized article was seized from a private vehicle, the Apex Court in *Boota Singh & Ors. Vs. State of Haryana*, reported in *2021 SCC Online SC 324* has clearly held that the private vehicle which is not a public conveyance could not come within the expression public place as explained in Section 43 of the ND&PS Act. He has also cited the decision of the Apex Court in *Mohd. Muslim alias Hussain Vs. State (NCT of Delhi)*, reported in *2023 SCC Online SC 352*, wherein the Apex Court held that, the Court should be satisfied that the accused might not be guilty of the offence and that upon released, they are not likely to commit any other offence. He thus submits that there is no possibility of the petitioner fleeing from justice or committing any offence, if granted bail.

**12.** I have heard the submissions made by both the learned counsels for the rival parties and perused the documents on record.

**13.** It is seen that the petitioner was arrested and charged under Section 21(c)/25/29 ND&PS Act, 1985, for the seizure of 501 grams of suspected heroin on 14.01.2023. The suspected contraband substance was seized from the vehicle in which petitioner along with the co-accused were travelling back to Lunglei from Aizawl. They were intercepted by one Vaivakawn PS staff in plain clothes near

Bawngkawn – Sairang road. With regards to the submission of the learned Additional Public that section 42 of the ND&PS Act does not apply in the instant case, since the contraband substance was seized from a vehicle in a public place and therefore, is a public place under section 43 ND&PS Act even though the vehicle from where the S.A was seized belonged to a private person, this Court finds that the Apex Court in *Boota Singh & Ors. Vs. State of Haryana (Supra)* has clearly dealt with this matter, where it held *that the private vehicle which is not a public conveyance could not come within the expression of public place as explained in Section 43 of the ND&PS Act.*

**14.** On perusal of the documents on record it is seen that the information report dated 14.01.2023 was made as mandated under Section 42(1) of ND&PS Act by Inspector Dhian Singh Minhas, Officer-in-charge of Vaivakawn Police Station, which was sent to and received by the Officer-in-charge Bawngkawn Police Station, Aizawl, Mizoram on the same day itself. This Court finds that the issue whether the report sent by the Inspector, Vaivakawn Police Station to the Officer-in-charge, Bawngkawn Police Station, Aizawl will connote that it was sent to an immediate superior Officer as required under section 42 (2) ND & PS Act will have to be explained/clarified by the Officer submitting the report by giving evidence in the trial court, thus this court is not inclined to make any observation on this point at this stage.

**15.** With regards to the submission that the seal used by the Seizing Officers while packing 40 exhibits were not sent to the FSL and therefore, this could cast doubt on this sanctity of the seized article. The learned Additional Public Prosecutor has

submitted that the seized contraband substances were packed and properly sealed immediately in the presence of the Judicial Magistrate 1<sup>st</sup> Class, I am of the view that this issue can be cleared and explained during the trial before the trial court by adducing the required evidence by the parties. This court also finds that the difference in the weight of the packed, sealed are only of slight difference and it is noted that ordinarily a very good and accurate scale may not be available at the time when the seized articles were packed, weight and sealed. Such slight difference may not be so crucial while considering the innocence of the petitioner. This court also find that the colour of the seized contraband substance, in some instances was described as orange powder, or brown powder or white powder, however, these differences in the description of the colour should also be explained during the Trial before the learned Trial Court since the perception and description of colour could differ from person to person. Likewise, the issue whether the boxes where the contraband substances were kept, should have been seized by the Seizing Officer or not is to be considered during the trial of the case and not at this stage.

**16.** This court is also of the view that, while considering the bail application under Section 37 of the ND&PS Act, the main point for consideration by the Court is, whether there are reasonable grounds for believing that the accused is not guilty of such an offence and that he is likely to commit any offence while on bail, as was held by the Apex Court in *Mohd. Muslim alias Hussain Vs. State (NCT of Delhi) (Supra)*, wherein the Apex Court had noted that “A plain and literal interpretation of the

conditions under [Section 37](#) (i.e., that Court should be satisfied that the accused is not guilty and would not commit any offence) would effectively exclude grant of bail altogether, resulting in punitive detention and unsanctioned preventive detention as well. Therefore, the only manner in which such special conditions as enacted under [Section 37](#) can be considered within constitutional parameters is where the court is reasonably satisfied on a prima facie look at the material on record (whenever the bail application is made) that the accused is not guilty. Any other interpretation, would result in complete denial of the bail to a person accused of offences such as those enacted under Section 37 of the NDPS Act.”

**17.** Thus, this Court on perusal of the charge sheet submitted and the other documents on record, including the statements of the witness and accused persons, finds that no reasonable grounds have been made out at this stage for believing that prima facie the accused is not guilty of the offence under Section 21(c)/25/29 of the ND&PS Act. Thus, considering the seriousness of the offence where the seized articles is of a commercial quantity and where the term of sentence under Section 21(c) ND&PS Act is rigorous imprisonment for a term, which shall not be less than 10 years, which may extend to 20 years and shall be liable to fine which shall not be less than Rs. 1 lakh but which may extend to Rs. 2 lakh and also considering the public interest where the menace of drugs has affected the society at large, this Court is not inclined to grant bail to the petitioner at this stage.

**18.** Accordingly, Bail Application No. 38/2023 is dismissed and stands disposed of.

**JUDGE**

**Comparing Assistant**