

GAHC030005042023



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

Case No. : Bail Appln./44/2023

Sh. Samil Ahmed
S/o Sahab Uddin
R/o Koulakhauri, Karimganj District, Assam.

VERSUS

The State of Mizoram and Anr.
r/b the Secretary to the Govt. of Mizoram, Excise and Narcotics Department, Aizawl,
Mizoram. 2:The Officer-in-Charg

Advocate for the Petitioner : Mr. C Lalfakzuala

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

BEFORE
HONOURABLE MRS. JUSTICE MARLI VANKUNG
ORDER

Date : 10-10-2023

Heard Mr. C. Lalfakzuala, learned counsel for the applicant/petitioner, who has filed this application under Section 439 Cr.P.C. r/w Section 37 of the ND&PS Act, 1985, for release of the applicant/petitioner on bail.

2. The case of the petitioner is that he was arrested on 28.10.2022 at 6:30 PM being present at the residence of Mr. Zodingluaia at the time when 1.004 Kgs (10,000 tablets) of Methamphetamine was seized from the bedroom of Mr.

Zodingluaia, which were kept in 50 blue plastic sachets, wrapped in white and black polythene bags. The petitioner was arrested due to the allegation that he and the co-accused Mr. Ruala were negotiating the price of the drugs near the bathroom inside the residence of Mr. Zodingluaia and that while they were negotiating the price, Mr. Ruala received a telephonic call and ran away. However, the petitioner and the said co-accused Mr. Zodingluaia were arrested and charged under Section 22 (c) & 29 of the ND&PS Act, wherein a case was registered as Crl.Tr.(Ex.) No. 1837/2022.

3. The learned counsel for the petitioner submits that the petitioner on his arrest on 28.10.2022, has been languishing under judicial custody at Central Jail, wherein the trial against the petitioner has not been completed till date. He submits that only 2 (two) witnesses have been examined so far and from the statements of the two witnesses, who are the seizure witnesses, it can be seen that nothing was seized from the petitioner and therefore, there is no likelihood of the petitioner who is innocent of the charge, being convicted under the sections charged against him. He further submits that there is no record of any alleged conversation and no mobile phone has been seized. He also submits that the said other person with whom the petitioner was suppose to negotiate i.e., Mr. Ruala has also not been arrested in the instant case.

4. For the above reasons, it is not possible for the prosecution to prove the charges made against the petitioner. He also submits that the delay in completion of the trial is in violation of the fundamental rights under Article 21 of the Constitution and in support of his submission, he has cited the order of the Gujarat High Court in *Yash Jayeshbhai Champaklal Shah Vs. State of Gujarat*

in R/Criminal Misc. Application No. 1234/2022 dated 02.03.2022 and Delhi High Court in *Gurmito Vs. Central Bureau of Investigation* in Bail Appln. No. 1621/2022 dated 20.07.2022, wherein the High Court of Gujarat and High Court of Delhi had also released the applicants due to the delay in completion of the trial. He has also relied on the judgments of the Apex Court in (i) *Nitish Adhikary @ Bapan Vs. The State of West Bengal* in Special Leave to Appeal (Crl.) No(s). 5769/2022 dated 01.08.2022, (ii) *Mohammad Salman Hanif Shaikh Vs. The State of Gujarat* in Special Leave to Appeal (Crl.) No(s). 5530/2022 dated 22.08.2022 and (iii) *Chitta Biswas Alias Subhas Vs. The State of West Bengal* in Criminal Appeal No(s). 245/2020 dated 07.02.2020, where bail was granted to the applicants on the grounds that they had spent long periods in Jail during the trial.

5. The learned counsel further submits that the petitioner is willing to abide to any condition if released on bail and that he would not abscond during the trial of the case.

6. Mr. C. Zoramchhana, learned Public Prosecutor, on the other hand has strongly objected to the release of the petitioner on bail at this stage, mentioning that from the statement made by the Seizing Officer and on perusal of the charge sheet, the involvement of the petitioner can be clearly made out and it is well established that the petitioner is guilty of the charge made out against him under Section 29 of the ND&PS Act. He further submits that on reading of Sections 35 & 54 of the ND&PS Act, it is clear that it is for the defence to prove that the petitioner had no culpable mental state and under Section 37 of the ND&PS Act, unless this Court is of the view that there are

reasonable grounds to believe that the petitioner is not guilty of the offence, bail should not be granted.

7. In view of the above, the learned Public Prosecutor submits that there are no grounds to release the petitioner on bail since there is enough evidence of the involvement of the petitioner in abetting the co-accused Mr. Zodingluaia under Section 22(c) & 29 ND&PS Act. He has also brought to the notice of the Court that there are 6 (six) prosecution witnesses, out of which 2 (two) civilian witnesses have been examined and the remaining 4 (four) prosecution witnesses are all Government servants and therefore, there should be no undue delay in examining the remaining prosecution witnesses.

8. The learned Public Prosecution in all fairness submits that direction may however be given to the learned Trial Court for disposal of the case expeditiously by fixing a certain time limit.

9. In view of the submissions made by the learned counsels for both the parties, this Court on perusal of the statement made by the Seizing Officer and on perusal of the charge sheet finds that, at this stage there is no *prima facie* grounds to believe that the petitioner is not guilty of the offence under Section 29 ND&PS Act. This Court finds that the learned counsel for the petitioner has not made out sufficient grounds to believe that the petitioner had no culpable mental state to commit the offence under which he has been charged. It is also seen that there are a total of 6 (six) prosecution witnesses, out of which 2 (two) civilian prosecution witnesses have given their evidence before the Trial Court and the remaining prosecution witnesses are all Government officials. Thus, it is unlikely that there will be any undue delay in the completion of the Trial.

However, considering the fact that the petitioner has been under judicial custody for over a period of 1 (one) year pending trial, this Court finds it fit to pass an order that the learned Trial Court by following the procedure prescribed under Section 309 Cr.P.C., complete the whole trial of the case within 3 (three) months from the date of this order.

10. Bail Application No. 44/2023 is thus dismissed with the above order and stands disposed of.

JUDGE

Comparing Assistant