

GAHC030005322022



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

Case No. : Bail Appln./24/2022

Sh. Sakir Uddin
S/o Abdul Rahman
R/o Hatkhala, Karimganj

VERSUS

The State of Mizoram
r/b the Secretary, Home Department, Govt. of Mizoram.

Advocate for the Petitioner : A H Borbhuiya

Advocate for the Respondent : Ms. Mary Lalruatkimi Khiantge (Addl.PP, Mizoram)

B E F O R E
HON'BLE MRS. JUSTICE MARLI VANKUNG
O R D E R

30.01.2023
(Monday)

Heard Mr. A.H. Borbhuiya, learned counsel for the applicant alongwith Ms. Mary L. Khiantge, learned Addl. Public Prosecutor.

This is an application filed under Section 37 of ND & PS Act, 1985 r/w section 439 of Cr.P.C, 1973 for granting bail to the petitioner, who has been arrested on 30.07.2022 in connection with Excise & Narcotics Case No. Ex-N-102 of 2022, U/s 21 (b) of ND & PS Act.

It is seen that the learned counsel for the applicant had previously filed of Bail application No.18/2022 and the Bail application was disposed vide the order dated 13.10.2022 as follows :-

“The Superintendent, Central Jail shall produced the bail applicant/accused alongwith all the medical documents before the Medical board its next sitting to be held on 19.10.2022 (Wednesday). Thereafter, the bail applicant/petitioner may approach the Special Court, ND&PS with a fresh bail application alongwith the medical report of the Medical Board and the Special Court, ND & PS shall disposed of the bail application, if submitted, expeditiously preferably within 2 (two) weeks.”

However, since there medical report of the Medical Board was not made available even after the lapse of 2 (two) weeks. The learned counsel for the applicant has filed this Bail application afresh on 07.12.2022 and this Court vide its Order dated 12.12.2022 had listed the matter on 15.12.2022 awaiting final report of Medical Board, likewise on 15.12.2022 since the final report of the medical report was not available, this matter was listed again on 12.01.2023 for awaiting for the final medical report. The matter was heard on 13.01.2023 wherein it was mentioned by the learned Addl. Public Prosecutor that the medical final report would be furnished shortly. This court had also noted that there are variations in the name of the petitioner in the certificates submitted and that the petitioner was allowed to file additional affidavit clarifying the discrepancies in his name appearing on the birth certificate. The matter was again heard on 19.01.2023, wherein this Court had mentioned that in the additional affidavit filed by the petitioner, there is nothing to show the correct name of the petitioner and that the original documents are to be produced by the petitioner.

The learned counsel for the petitioner has produced the original certificates of the

petitioner which is the EPIC card, Aadhar card and the PAN card and this court is of the view that the correct name of the petitioner is Sakir Uddin S/o Abdur Rahman.

It is also seen that the respondents have filed their affidavit enclosing the final report of the Medical Board annexed as Annexure – III.

The learned counsel for the petitioner submits that though the final medical report mentions that no urgent surgery is required, it is clear that surgery is required to be performed upon the petitioner and this cannot be done while he is in judicial custody, he has prayed for release of the petitioner on medical grounds since the petitioner is also shown to be suffering from Chronic low backache with radiculopathy and needed physiotherapy. He also mentions that the seized article in the case is only 15 grams and is not a commercial quantity.

Ms. Mary L. Khiangte, learned Addl. Public Prosecutor on the other hand submits that the final medical examination report submitted by the Medical Examination Board has clearly mentioned that there is no need for urgent surgery and that the medical condition of the petitioner can be treated as OPD case and thus there are no grounds for releasing the petitioner on bail on medical grounds since it appears that the petitioner is guilty of the offence under section 21(b) of the ND & PS Act, 1985.

Having heard the submissions of both the parties, this court finds that the petitioner has prayed for release on bail mainly due to his medical conditions, wherein the petitioner is required to be treated outside judicial custody. On perusal of the report submitted by the Medical Examination Board, Civil Hospital, Aizawl dated 12.01.2023, it is seen that the

petitioner is suffering from Prostomegaly and needs regular medication, Chronic low backache with radiculopathy-needs physiotherapy, no urgent surgery and Chronic gastritis with peripheral neuropathy and can be treated as OPD case.

In view of the report submitted by the Medical Examination Board, it appears that the ailment of the petitioner can be treated as OPD case and there is no requirement for any urgent surgery, thus the medical report of the Medical Examination Board does not support the claim of the petitioner that he needs to be released from judicial custody for medical reasons.

In view of the above, this court finds it fit to dismiss the bail application.

However, it may be noted that the petitioner is not debarred from applying for bail on any other fresh grounds other than the above medical ground before the learned Trial Court.

With the above observation, Bail Application No. 24/2022 stands dismissed and disposed.

JUDGE

Comparing Assistant