

GAHC030005432023



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

Case No. : I.A.(Crl.)/53/2023

Sh. Lalzamliaana
S/o C. Zarlianthanga
R/o Tuithiang Veng, Aizawl, Mizoram.

VERSUS

The State of Mizoram and Anr.
r/b the Secy. to the Govt. of Mizoram, Home Department. 2:Inspector Vanlalsiam

Advocate for the Petitioner : Mr A.R. Malhotra

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

Linked Case : Crl.A./39/2023

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r/b the Secy. to the Govt. of Mizoram
Home Department.

2:Inspector Vanlalsiam
C/o Officer-in-Charge

Hnahthial P/S
Hnahthial - 796571

Advocate for the Petitioner : Mr A.R. Malhotra
Advocate for the Respondent : P.P./Addl.PP
Mizoram

B E F O R E
HON'BLE MR. JUSTICE KAUSHIK GOSWAMI
ORDER

30.11.2023

This is an application under Section 389 CrPC for suspension of the impugned Judgment dated 24.08.2023 alongwith execution of the Sentence Order dated 28.08.2023 in connection with Criminal Trial No. 59/2021 (Ref: Hnahthial PS Case No. 18/2020 dated 26/10/2020) wherein the Judge, Special Court, ND&PS Act, Lunglei District had convicted the appellant/applicant under Section 22(c) of the ND&PS Act, 1985 and sentencing him to undergo Rigorous Imprisonment for a period of 10 years and to pay a fine of Rs. 1,20,200/-, in default, another Rigorous Imprisonment for a period of 1 year and to release him on bail.

Mr. C. Tlanthianghlina, learned counsel for the applicant submits that the co-accused No. 1. Lalruatkima has been acquitted, the present accused applicant ought to have also been acquitted, inasmuch as, both the accused were travelling in the subject vehicle from Hnahthial to Aizawl, where methamphetamine has been seized.

He further urged that the said contraband articles has not been recovered from his possession.

Mrs. Mary L. Khiangte, learned Addl. Advocate General strongly opposes the prayer for suspension/release on bail. She urged that the trial court on the basis of evidence, having come to the conclusion that the offence has been established against the accused/applicant, no case for suspension/release on bail is made out.

Upon perusal of the materials on record, it indicates that the learned Trial Court has convicted the accused applicant on the basis of evidence to the effect that the methamphetamine was recovered from the possession/racksack of the accused which was kept on the floor of the car between his legs. Further, it appears that accused has admitted that the racksack from where seized methamphetamine was recovered, belongs to him in his 313 statement.

As regard the involvement of the other accused who has been acquitted, there is clear finding of the Trial Court that he has no knowledge of the contraband articles carried by the accused/applicant and the accused/applicant has hired his vehicle.

Since the material indicates involvement of the accused applicant alone and he has already been convicted, the question of presumption of innocence does not arise. Nor is the principle of bail being the rule and jail an exception will be attracted, once there is conviction upon trial. Further, this being a case under ND&PS Act, and this Court upon perusal of the material on the record, is of the considered opinion that the

applicant has failed to make out a case for grant of bail. Therefore, I am not inclined to release the applicant on bail by suspending the impugned Judgment dated 24.08.2023 alongwith Execution of the Sentence Order dated 28.08.2023.

Accordingly, the present IA stands dismissed.

JUDGE

Comparing Assistant