

GAHC030005522023



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

Case No. : Bail Appln./46/2023

Sh. Zomuanpuia
S/o MS Dawngliana
R/o Zotlang, Aizawl.

VERSUS

The State of Mizoram and Anr.
Through Anti-Narcotic Squad,
Commissionerate of Excise and Narcotics Department, Aizawl, Mizoram. 2: The
Officer-in-Charge
Anti-Narcotic Squad
Excise and Narcotics
Mizoram
Aizawl

Advocate for the Petitioner : Mr Reuben Lalrinsanga

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

B E F O R E
HON'BLE MR. JUSTICE NELSON SAILO
ORDER

20.11.2023

Heard Mr. Reuben Lalrinsanga, learned counsel for the applicant and Mrs. Mary L Kiangte, learned Addl. Public Prosecutor for the State. By filing this application

under Section 439 Cr.P.C, the applicant prays for his release on bail. The applicant contends that he was arrested by the Excise & Narcotics Personnel on 04.12.2022 for alleged possession of illicit drug suspected to be heroin weighing about 114 grams. The same was recovered from the residence of the petitioner's parents at Hualngohmun. The seized article was kept in the ceiling of his sister's bedroom. As a result, Excise Case No. N-208/2022 was registered under Section 21(b) of the ND&PS Act, 1985 and investigation conducted. Upon completion of the investigation, charge-sheet was submitted and according to the learned counsel for the petitioner, the evidence of the prosecution has already been led and the petitioner has also been examined under Section 313 of the Cr.P.C and now it is in the stage of the defence evidence.

[2.] The learned counsel submits that the alleged seized article was not recovered from the physical possession of the petitioner and therefore, the petitioner has no involvement in the matter. The learned counsel submits that the petitioner is also seriously ill and since his medical condition was serious, he was granted interim bail by the learned Trial Court w.e.f., 08.08.2023 to 09.09.2023 vide Order dated 08.08.2023 passed in Bail Application No. 1406/2023. That because of his illness the petitioner had to be hospitalized on 06.09.2023. The bail application was finally taken up for hearing on 08.09.2023 wherein, the learned Trial Court rejected the Bail Application of the petitioner and directed the petitioner to surrender to the Court on 11.09.2023. When the petitioner appeared before the Court on 11.09.2023, the

learned Trial Court, upon seeing the condition of the petitioner, directed him to come again on 13.09.2023. When he came to the Court on 13.09.2023, the learned Trial Court sent the petitioner to Jail. Since then, the petitioner has been lodged in Jail. The learned counsel submits that since his arrest, the petitioner has been in Jail for 340 days and that in view of the ground taken in the instant application, the petitioner may be released on bail pending conclusion of the trial.

[3.] The learned counsel further submits that despite medical condition of the petitioner, the learned Trial Court declined to grant bail to the petitioner and therefore the rights of the petitioner guaranteed under Article 21 of the Constitution of India has been violated. The learned counsel further submits that there is also clear discrepancy in the version of the case I.O and the seizing officer. According to the seizing officer, the colour of the seized article was reddish in colour whereas, according to the Investigating Officer, the same was yellowish in colour. The same only casts of serious doubt on the veracity in the prosecution story. The learned counsel submits that moreover, the seized article was not seized from the physical possession of the petitioner and therefore, the petitioner cannot be proceed against under Section 21(b) of the ND&PS Act. The learned counsel further submits that the petitioner is also the sole bread-winner of the family and having dependents who rely on his earnings. Such being the case, the learned counsel submits that the petitioner may be released on bail.

[4.] Ms. Mary L Khiangte, learned Addl. Public Prosecutor, on the other hand,

submits that the submissions made by the learned counsel for the petitioner about there being violation of Article 21 of the Constitution is not available in the pleadings. In other words, the submission of the learned counsel for the petitioner is not supported by his pleadings. The learned counsel submits that from the statements recorded under Section 313 of the Cr.P.C., it can be seen that the petitioner has admittedly led the Excise & Narcotics Personnel to the house of his parents at Hualngohmun from where the seized article was recovered from the hidden spot. The petitioner has also admitted that 2 (two) *hawngs* of heroin was also seized from his possession on 04.12.2022, prior to the seizure made at Hualngohmun. Therefore, the petitioner cannot deny the fact that he was aware that the seized articles were heroin and the possession of which is punishable under the ND&PS Act. Therefore, he cannot claim innocence or being ignorant. Insofar as the colour of the seized article is concerned, she submits that it was only the perception of the seizing officer and the case I.O about the colour of the same and the same does not affect the case of the prosecution. She also submits that the colour of the seized substance, in fact, can be also affected by exposure or by passage of time and therefore, the discrepancy as pointed out by the learned counsel for the petitioner cannot be a ground to vitiate the case of the prosecution. The learned counsel also submits that since the trial is at the verge of completion, no special ground has been made out by the petitioner to grant him bail at this stage. Therefore, the bail application should be rejected.

[5.] I have heard the submissions made by the counsels for the rival parties and

I have perused the materials available on record.

[6.] Regarding the seizure of 114 grams of heroin, the seizure memo speaks for itself. The materials on record goes to show that on the guidance of petitioner himself, the seized articles were recovered from the residence of his parents at Hualngohmun. The petitioner has also admitted the same in his statement before the Excise Personnel and also from the statements recorded under Section 313 of the Cr.P.C. Regarding the illness of the petitioner, it is seen that in the bail application submitted by the petitioner before the Trial Court, although the Trial Court granted the interim bail for a period of one month but when the final hearing was done, the learned Trial Court noticed the fact that just before the completion of the period of interim bail granted, the petitioner admitted himself to Trinity Hospital on 06.09.2023 which according to the Trial Court was only for the purpose of securing an extension of bail to him. Hence, the Bail Application of the petitioner was not extended and he was directed to surrender himself before the Trial Court. With regard to the health condition of the petitioner, the petitioner has enclosed copy of the discharged summary from hospital. The condition of the petitioner on his discharge is shown to be stable and comfortable. It is further seen that the petitioner has been prescribed six types of medication and he has been asked to come back for follow-up/review after 3 (three) months. The same does not show that the condition of the petitioner was so serious that he was required to remain admitted in the hospital. It is also noticed that after the bail application was rejected on 08.09.2023, the petitioner filed

the instant bail application after more than one month i.e., on 13.10.2023. Therefore, the medical condition of the petitioner appears to be manageable even while he is lodged in Jail. Moreover, as already noticed herein above, the trial is at the final stage and therefore, upon due consideration of the matter in its entirety, I do not find any ground to grant bail to the petitioner at this stage.

[7.] Accordingly, the Bail Application stands rejected.

JUDGE

Comparing Assistant