

GAHC030005732023



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

Case No. : Bail Appln./51/2023

Sh. Lalneihthanga
S/o HT Sanga
R/o New Champhai, Champhai, Mizoram.

VERSUS

The State of Mizoram and Anr.
r/b the Secretary/Commissioner, Excise and Narcotics Department, Govt. of
Mizoram.

2:The Officer-in-Charge
Anti-Narcotic Squa

Advocate for the Petitioner : Mr. J H Ramneihmawia

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

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

23.11.2023

Heard Mr. J.H. Ramneihmawia, learned counsel for the petitioner and Mrs. Mary L. Kiangte, learned Addl. Public Prosecutor for the State. By filing this bail application, the petitioner seeks for his enlargement on bail pending conclusion of the trial. According to the petitioner, he was arrested on 04.09.2021 in connection

with the recovery of 363 grams of Heroin. Along with the petitioner, Mr. Lalsiamthara and Lalropianga were also arrested.

[2.] The learned counsel submits that the petitioner is not involved with the recovery of Herion and that he had merely travelled from Champhai to Aizawl along with Lalsiamthara on being asked to accompany certain plastic parcel by one lady named Masangi. The learned counsel submits that the other co-accused persons have in fact already been granted bail by the learned Trial Court on 05.04.2022 and 05.07.2022. The learned counsel submits that charge sheet was filed on 03.12.2021 but however, out of the seven (7) prosecution witnesses named by the prosecution, only two (2) witnesses have been examined and the examination of one of the witness i.e., P.W-2 has been dropped. The learned counsel submits that since there is hardly any progress in the trial, the petitioner may be released on bail pending finalization of the trial. In support of his submission, the learned counsel has relied upon the following authorities:-

(i) Surinder Singh Alias Shingara Singh -Vs- State of Punjab (2005) 7 SCC 387.

(ii) Mohd. Muslim alias Hussain -Vs- State (NCT of Delhi). 2023 SCC OnLine SC 352.

[3.] Referring to the above decisions, the learned counsel submits that in view of the slow progress of the trial proceedings, the vigours of Section 37 of the ND&PS

Act will not come on the way for considering the grant of bail. He therefore submits that the petitioner may be granted bail, as prayed for.

[4.] Mrs. Mary L. Khiangte, learned Addl. Public Prosecutor on the other hand submits that the petitioner cannot deny the fact that he was accompanying the seized article from Champhai to Aizawl knowing fully well that the same was Heroin and was also promised to be paid well. In this connection, she refers to the statement of the petitioner that was recorded during the investigation and also the deposition of the Seizing Officer who was examined as PW-1 wherein, the same witness stated that he arrested the petitioner along with his friend because they were transporting the seized article. She submits that the amount recovered being a commercial quantity and also the fact that there cannot be any presumption of the petitioner being not guilty, bail should not be granted to the petitioner.

[5.] I have heard the submissions made by the learned counsels for the rival parties and I have perused the materials available on record. Charge sheet filed on 03.12.2021 indicates that the petitioner and the two (2) other persons were arrested on 04.09.2021 in view of the recovery of 636 grams of Heroin which was being transported from Champhai to Aizawl in a plastic drawer parcel. On his arrest, the petitioner has also admitted to the fact that he has accompanied the seized article from Champhai to Aizawl on being promised a sum of Rs. 1.5 lakh for his service. The petitioner has sought for grant of bail on a ground that the main

accused person Sh. Lalropianga and also the co-accused person Sh. Lalsiamthara had been granted bail by the learned Trial Court. The Order passed by the learned Trial Court granting bail to these two (2) persons is annexed by the petitioner in the additional affidavit filed on 20.11.2023 and the same goes to show that it was on account of them being admitted to the hospital because of their ailment and also to lessen the burden of Prison officials and police personnel. The learned counsel for the petitioner otherwise fairly submits that these two (2) persons who have been granted bail have absconded. He however submits that in respect of the present petitioner, he is a permanent resident of Champhai and therefore, there is no chance for him to abscond in the event bail is granted and that he is ready to abide by any terms or conditions imposed by this Court.

[6.] The learned counsel has relied upon the case of *Surinder Singh Alias Shingara Singh* (supra) to impress upon the Court that Article 21 of the Constitution of India confers a fundamental right on every person not to be deprived of his rights except in accordance with the procedure prescribed by the law. The procedure prescribed by law also must ensure speedy trial for determination of the guilt of any such arrested person. He submits that in the present case, since there is hardly any progress in the trial, the petitioner should be released on bail. However, the fact remains that charge sheet was filed on 03.12.2021 and since then, trial has begun. Two (2) prosecution witnesses i.e., PW-1 and PW-3 are said to have been

examined and PW-2 has been dropped. Therefore, what remains to be examined are the evidence of the remaining seven (7) witnesses. What would amount to inordinate delay has also not been specified in the case of *Mohd. Muslim alias Hussain* (supra) relied upon by the learned counsel for the petitioner. No doubt, the Apex Court has emphasize that prolong incarceration and inordinate delay should invite the attention of the Court while considering bail application including one filed under Section 37 of the ND&PS Act. However, as already indicated, no such time frame so as to construe there being inordinate delay has been indicated. The petitioner as already stated was arrested on 04.09.2021 and the charge sheet was filed on 03.12.2021 i.e., within three (3) months from the date of his arrest. Now the trial is said to be underway and if the petitioner feels that the trial is not progressing as it should be and for which, he remains under prolong incarceration, he is at liberty to approach the trial court, seeking dropping of such prosecution witnesses who fail to appear despite being summon regularly. The delay as sought to be impressed upon this Court in the considered view of this Court cannot be construed to be an inordinate delay, having regard to the fact that the petitioner and the co-accused person have been charge under Section 21(c) read with Section 28 and 29 of the ND&PS Act wherein, the penalty prescribed is an imprisonment of not less than 10 years along with a fine of Rs. 2 lakhs.

[7.] In view of above, this Court is not inclined to grant bail to the petitioner and

accordingly, the bail application stands rejected.

[8.] It is however observed that the petitioner is at liberty to approach the learned Trial Court with appropriate application praying for speedy trial as may be considered feasible and in the event such application is filed, the learned Trial Court shall consider the same on its own merit and proceed accordingly.

JUDGE

Comparing Assistant