

GAHC030006072023



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

Case No. : Bail Appln./53/2023

Smt. Lalngilneii
W/o Zoramchuana
R/o Dam Veng, Champhai, Mizoram.

VERSUS

The State of Mizoram
Aizawl.

Advocate for the Petitioner : Mr Zoramchhana

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

B E F O R E

HON'BLE MR. JUSTICE NELSON SAILO
ORDER

29.11.2023

Heard Mr. Zoramchhana, learned counsel for the petitioner who submits that by filing this application under 439 of the Cr.P.C read with Section 37 of the ND&PS Act, the petitioner prays for grant of regular bail. The petitioner contends that she was arrested on 14.07.2023 in connection with alleged recovery of 5.114 kgs of heroin, which was seized from 4 (four) non-Mizos, which was concealed in two vehicles namely, white Bolero Bearing Registration No. AR 02-M 0543 and red colour Grand Vitara car Bearing Registration No. TR 07-F 0451. As a result, Excise Case No. N-

200/2023 dated 15.07.2023 under Section 21(c) of the ND&PS Act was registered and investigated into.

[2.] Mr. Zoramchhana, learned counsel submits that the petitioner is not involved in any manner with the alleged recovery of the seized article and in fact, it was not recovered from her person and that she was in Aizawl at the time when the alleged recovery was made. He submits that the arresting authority has been greatly biased in arresting the petitioner by alleging that the seized article belongs to her. He submits that the petitioner is carrying out the business of selling vegetables and that at the time of her arrest, she had come down to Aizawl from Hnahlan for medical check-up along with her husband and their driver. Along with her, the husband of the petitioner and their driver were also arrested but they have been discharged on the prayer made by the Investigating Officer on 21.07.2023. The learned counsel further submits that the medical condition of the petitioner is also not conducive for her to stay in jail. He submits that the petitioner is suffering from Tuberculosis, which is a highly contagious disease and her prolonged stay in the jail poses a risk to other inmates. While lodged in jail, the petitioner is unable to get proper treatment for her illness. He further submits that the petitioner is also suffering from *compression collapsed of L-1 vertebra with retro pulse fragment indenting the calsac* due to which she is having immense lower back pain which is on account of a vehicular accident she met in the month of May, 2022. Since then, she is under constant medical treatment.

[3.] The learned counsel further submits that the petitioner should undergo the imprisonment as prescribed under law in the event she is found guilty and convicted but if she is acquitted from the charge, there is no possibility to undo the term of imprisonment which she has undergone during the investigation and as an under trial prisoner. The learned counsel submits that there are no materials to show that the money which has been deposited in the Bank account of the petitioner is on account of the sum of money promised to her for the selling of 5.114 kgs of suspected heroin

to the non-local arrested persons. Therefore, in absence of any evidence to show that money has indeed been deposited in her Bank account, no presumption can be drawn about the involvement of the petitioner in the present case.

[4.] Mrs. Linda L Fambawl, learned Addl. Public Prosecutor, on the other hand, by producing the Case Diary submits that as per the statements made by the petitioner herself during her interrogation, she has admitted the fact that a huge sum of money was deposited in her Bank account for the price of the alleged heroin being sold by her acquaintance who hails from the neighboring country of Myanmar. As per her statements, she has been promised a sum of Rs. 1000/- per Rs. 1 lakh deposited in her Bank account and so far, a sum of Rs. 30,000/- and Rs. 20,000/- has been deposited in her Bank account separately for the transaction which appears to have occurred between the arrested non-locals and the person acquainted with the petitioner. She submits that since the investigation is yet to be complete and there appears to be prima facie evidence about the involvement of the petitioner, the petitioner should not be released on bail.

[5.] I have heard the submissions made by the learned counsels for the rival parties and I have perused the materials available on record.

[6.] Section 37 of the ND&PS Act provides that a person so arrested may be released on bail after giving the Public Prosecutor an opportunity of opposing the bail and that the Court is satisfied that there are reasonable grounds to believe that the person arrested is not guilty of the offence and that he is not likely to commit any offence while on bail. However, here is a case wherein the petitioner as per her statement seems to be aware of the fact that the deal between the parties concerned through her Bank account is regarding sale of the heroin to the non-local residents and for that, she has been promised some remuneration. The records go to show that the husband of the petitioner is not aware about the said arrangement and likewise, their driver is also not aware of the same. Although they were picked up at the initial

stage but on the prayer of the case Investigating Officer, their names have been dropped since the petitioner herself has stated that the aforesaid arrangement is not known by them.

[7.] Therefore, upon perusal of the application and also the Case Diary produced by the learned Addl. Public Prosecutor, this Court is not inclined to grant bail to the petitioner at this stage. Accordingly, the Bail Application stands rejected. Let the Case Diary be returned back to the learned Public Prosecutor.

[8.] Before parting with the records, it is hereby observed that since the petitioner claims to have medical issues, the Special Superintendent of Central Jail, Aizawl shall ensure that the petitioner gets proper care for the medical condition she claims to have.

JUDGE

Comparing Assistant