

GAHC030006292023



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

Case No. : Bail Appln./58/2023

Smt. Maria Lalrotluangi
Champhai Kanan Veng, Mizoram

VERSUS

State of Mizoram and Anr.
Aizawl, Mizoram 2: The Superintendent of Police
Mizoram Police Department
Aizawl DEF
Aizawl

Advocate for the Petitioner : Ms. Jacinta Zothanmawii

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

ORDER

BEFORE
HONOURABLE MR. JUSTICE NELSON SAILO

11.12.2023

Heard Ms. Jacinta Zothanmawii, learned counsel for the applicant and Mrs. Mary L. Kiangte, learned Addl. Public Prosecutor for the State respondent. By filing this application under Section 37 of the ND&PS Act read with Section 439 Cr.PC, the applicant prays for her release on bail. It is the case of the applicant that she was

arrested on 24.04.2023 at 8:00 P.M due to the recovery of five (5) plastic packets where it was written Daguanyin Tea Bags, but allegedly contained 5.204 kgs of suspected Crystal Meth. Accordingly, Bawngkawn Police Station Case No. 319/2023 dated 24.04.2023 under Section 22(c) of the ND&PS Act was registered and investigated into.

[2.] Upon concluding the investigation and upon finding a prima facie case established against the applicant chargesheet was filed on 22.06.2023. In the chargesheet, as many as nine (9) prosecution witnesses have been mentioned. It is submitted at the bar that as of today, two (2) prosecution witnesses have been examined i.e., PW-1 and PW-2. PW-3 is due to be examined either on 21st or 22nd of December, 2023.

[3.] Ms. Jacinta Zothanmawii, learned counsel submits that the applicant is a first time offender and has no past criminal record. She submits that she was not even aware of the fact that she was carrying Crystal Meth from Champhai to Aizawl. She submits that one of her acquaintance who hails from Myanmar asked her to carry the packets to Aizawl and that on reaching Aizawl, she would be contacted by somebody and who will pick up the packets from her. The applicant thinking that the packets contained coffee, she brought them down from Champhai to Aizawl.

[4.] The learned counsel further submits that at the time when the alleged banned substance was recovered from her possession, no seizure witnesses were examined. The police authorities also did not record the grounds of belief before they confronted

the applicant and that the recovery was made after sunset. The learned counsel also submits that out of the five (5) packets seized, only one (1) packet was opened in the place of occurrence. The seizure memo also does not indicate that the contraband substance was recovered from the Daguan Yin Tea Bags, which was brought by the applicant from Champhai to Aizawl on the request made by her acquaintance. The learned counsel therefore submits that the applicant, pending conclusion of the trial may be released on bail.

[5.] Mrs. Mary L. Khiangte, learned Addl. Public Prosecutor on the other hand submits that the investigating authorities while making the recovery of the contraband substance and also during the investigation scrupulously complied with all the provisions contained in Chapter-V of the ND&PS Act. She submits that as many as 5.204 kgs of Crystal Meth kept in five (5) packets were recovered from the possession of the applicant and the applicant was also aware about the contraband substance that she was carrying. The learned Addl. Public Prosecutor further submits that the Seizing Officer upon getting information from his source recorded his grounds of belief under Section 42 of the ND&PS Act before proceeding to the place of occurrence and he furnished/forwarded a copy of the same to the next superior officer i.e., Intelligence Branch Inspector, District Special Branch, Aizawl. The permission of the Judicial Magistrate, First Class was also obtained under Section 46(4) of the Cr.PC for arresting the applicant who was a female on 24.04.2023 after sunset and before sunrise. The police authorities also prepared an inventory of the seized articles and

produced them before the learned Judicial Magistrate, First Class for certification of the occurrence thereof. Therefore, it is clear that there are no procedural lapse on the part of the arresting and investigating authority. The learned Addl. Public Prosecutor submits that the applicant was arrested on 24.04.2023, the chargesheet filed on 22.06.2023 and since then, the trial is in motion and is at the stage of prosecution evidence. She submits that as many as two (2) prosecution witnesses have already been examined and the remaining witnesses will be examined within no time. She therefore submits that no grounds for releasing of the applicant on bail has been made out and that the applicant should not be released on bail.

[6.] I have heard the submissions made by the learned counsels for the rival parties and I have perused the materials available on record. By referring to the statements of the applicant made before the police, the learned counsel for the applicant has sought to impress upon the Court that the applicant was not aware of the fact that the packets she was carrying were in fact Crystal Meth and not coffee. In the recorded statements of the applicant before the police, it is seen that the applicant was informed by his acquaintance Sh. Pa-uka of Tahan, Myanmar that somebody will come and collect the packets once she reaches Aizawl. As informed to her, one Sangi came to the applicant but she took only one (1) packet since she did not have a carry bag. The applicant kept the remaining four (4) packets in her travel bag which was kept besides her bed. As for the remaining four (4) packets, she stated that she will hand over the same at Bawngkawn on her way to give her exams. By this time, the police in

plain clothes along with local leaders entered the house and arrested her after informing her who they were. The applicant in her recorded statements stated that after she was arrested by the police, she deleted all her call history and messages. This act of the applicant in deleting all her call history and messages received on her phone seems to suggest that she was somehow aware of the fact that the packets she was carrying from Champhai to Aizawl were not what it seems to be i.e., either coffee or tea. If she was innocently carrying the packets from Champhai to Aizawl without knowing actually that the same were Crystal Meth, she would have retained the messages and call history in her phone without deleting them.

[7.] The learned counsel for the applicant has contended that the police authorities did not follow the mandatory provisions of Section 42 of the ND&PS Act and also Section 46(4) of the Cr.PC before proceeding to detain and arrest the applicant. However, from the documents annexed to the bail application itself, it is seen that the grounds of belief was indeed recorded by the police before proceeding to Laipuitlang, Aizawl from where the recovery of the alleged contraband substance was made. Also, permission to arrest the applicant, who was a female was also obtained from the Judicial Magistrate, First Class under Section 46(4) Cr.PC. The deposition of PW-1 (Seizing Officer) is also annexed to the bail application as Annexure -5 and in the examination-in-chief of the said witness, after observing all the formalities, he had asked the applicant to take out all the contraband articles that was in her possession, if any, and the applicant herself took out one (1) packet of contraband substance,

suspected to be Crystal Meth, which she kept concealed in her black bag and another four (4) packets which were also taken out from the bedroom. All these substances were packed in five (5) Daguan Yin Tea bags.

[8.] Thus, from the materials available on record and having regard to the rigors of Section 37 of the ND&PS Act, it cannot be said that reasonable grounds exist to believe that the applicant is not guilty of the alleged offence. Therefore, upon due consideration, this Court is not inclined to grant bail to the applicant and accordingly, the same is rejected.

JUDGE

Comparing Assistant