

GAHC030006342023



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

Case No. : Bail Appln./59/2023

Smt. Lalzuitluangi
New Champhai, Mizoram

VERSUS

State of Mizoram
Aizawl, Mizoram

Advocate for the Petitioner : Mr. C Lalfakzuala
Advocate for the Respondent : P.P./Addl.PP, Mizoram

BEFORE
HONOURABLE MRS. JUSTICE MARLI VANKUNG
ORDER

Date : 13-12-2023

Heard Mr. C. Lalfakzuala, learned counsel for the applicant along with Ms. Mercy Lalhriattluangi, learned counsel for the applicant and Ms. Mary L. Khiangte, learned Additional Public Prosecutor for the State respondent.

2. This is a bail application filed under Section 37 ND&PS Act, 1985 r/w Section 439 Cr.P.C. for releasing the applicant on bail.

3. The learned counsel submits that the applicant was arrested on 15.03.2023 at 5:35 PM along with the co-accused Sh. Issac V.L. Muana and Thangchungnungi for alleged possession of 311 grams of Heroin and charged

under Section 21(c) of the ND&PS Act. The learned counsel submits that the applicant is innocent of the charge, since the charge sheet submitted by the case I.O has not implicated nor indicated the involvement of the applicant. As per the charge sheet submitted, it is seen that the applicant is only the live-in girlfriend of the main accused Sh. Issac V.L. Muana, the seized articles found in the residence of the co-accused Thangchungnungi which was kept by the accused Issac V.L. Muana and 3 grams of the seized articles was found from his possession.

4. The learned counsels submit that 3 (three) prosecution witnesses have been examined before the Trial Court and the statements of the 3 (three) prosecution witnesses have not implicated the instant applicant in any way, since she was not involved in the possession of the seized articles. The learned counsels further submit that this Court in its Order dated 09.10.2023 had allowed the co-accused Thanchungnungi to be released on bail in Bail Application No. 41/2023. The learned counsels further submit that out of the 10 (ten) prosecution witnesses, only 3 (three) prosecution witnesses have been examined till date and therefore, the trial of the case is likely to take some time, while the applicant being innocent having 3 (three) minor children to look after is facing much hardship. That she is a permanent resident of Champhai and is not likely to abscond during Trial. She has also cited the decision of the Apex Court in *Roy V.D. Vs. State of Kerala*, reported in (2000) 8 SCC 590 (para 18).

5. Ms. Mary L. Khiangte, learned Additional Public Prosecutor, on the other hand has strongly objected to the grant of bail to the applicant. The learned Additional Public Prosecutor submits that on reading of the charge sheet which is submitted by the case I.O, the involvement of the applicant has been clearly made out, since the case I.O had mentioned that on 06.03.2023, the accused

Issac V.L. Muana along with the instant applicant had gone to Aizawl with 23 (Hawng) of Heroin. It is also mentioned by the case I.O that on 15.03.2023 while intending to sell one hawng of Heroin, he (Issac V.L. Muana) was caught red handed by the members of the CADS, CYMA and he also stated that 3 grams of Heroin which is seized from the rented house is concealed by himself for his own consumption and he had further stated that he intended to sell one hawng of Heroin at the price of Rs. 20,000/-.

6. The learned Additional Public Prosecutor submits that since the applicant is the live-in girlfriend of the accused Issac V.L. Muana, it is obvious that she had accompanied him when the S.A. was seized from Issac V.L. Muana and that she was very much aware of the fact that the seized Heroin was hidden in the cupboard in the house in which they had rented. She also submits that nowhere has it been mentioned that the applicant was not present when the seized articles were seized from the possession of Issac V.L. Muana and therefore, she was there along with Issac V.L. Muana and was all along aware of the seized articles. When Issac V.L. Muana was caught red handed by the members of the CADS and CYMA, the applicant was aware that the S.A. was kept by the accused Issac V.L. Muana.

7. The learned Additional Public Prosecutor also submits that the case cited by the learned counsel for the applicant is not applicable in the instant case. The learned Additional Public Prosecutor also submits that from the prosecution witnesses, it can be seen that 2 (two) of the prosecution witnesses are the seizure witnesses and therefore, they did not mention the presence of the applicant. She also submits that the Trial Court is proceeding with the trial of the case expeditiously and that there is no undue delay in the trial of the case, which was initiated only after the charge sheet was submitted on 04.05.2023.

8. In rebuttal, the learned counsel for the applicant pointed that though the applicant was made an accused along with the co-accused Issac V.L. Muana, her involvement is for only being present with the main accused Issac V.L. Muana and she has not been charged under Section 23 or 29 of the ND&PS Act. For the said reasons, he has prayed that the applicant may be granted bail.

9. Having heard the submissions made by both the learned counsels for the parties, this Court finds that the bail application has been made under Section 37 ND&PS Act, 1985 r/w Section 439 Cr.P.C.

10. From the perusal of the evidence on record and on considering the submissions made by the learned counsels for both the parties, this Court finds that on perusal of the charge sheet submitted by the case I.O, the *prima facie*, involvement of the applicant to be charged under Section 21 (c) of the ND&PS Act is not apparent. The case I.O only mentions that the accused Issac V.L. Muana had stated that on 06.03.2023, he himself and the applicant went to Aizawl with 23 hawng of Heroin. However, it is seen that the co-accused Issac V.L. Muana is the one who has stated that he is the owner of the seized articles. It is seen from the statements of the applicant recorded by the case I.O, the applicant she had only admitted that she was the live-in partner of the accused Issac V.L. Muana.

11. For the above reasons, this Court finds that, on considering the contents of the charge sheet and the evidence adduced so far, the involvement of the applicant in the seizure of 311 grams of Heroin is *prima facie* not found, unless proved otherwise during trial by the remaining prosecution witnesses. It is also seen that the applicant is a mother of 3 (three) minor children and a permanent resident of Champhai.

12. In view of the above, the application for release on bail is allowed and the applicant may be released on bail with a bail bond of Rs. 50,000/- and with 2 (two) sureties of the like amount. The sureties should be to the satisfaction of the Trial Court. It may also be mentioned that the above initial-observation is not to be taken into consideration or influence the final outcome of the main trial of the case.

13. Accordingly, Bail Application No. 59/2023 stands allowed and disposed of.

JUDGE

Comparing Assistant