

GAHC030006372023



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

Case No. : Bail Appln./60/2023

Sh. Lalbiaknunga
Bungtlang 'S', Lawngtlai, Mizoram

VERSUS

State of Mizoram
Aizawl, Mizoram

Advocate for the Petitioner : Mr C Lalfakzuala

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

B E F O R E
HON'BLE MR. JUSTICE KAUSHIK GOSWAMI
ORDER

04.12.2023

This is an application under Section 37 of the ND&PS Act, 1985 read with Section 439 Cr.PC for enlargement of the applicant on bail during the pendency of trial.

2. The case of the prosecution is that on 20.03.2023, an information was received that some unknown persons were strongly suspected of possessing contraband items at Chite veng area, Aizawl. Accordingly, the Special Narcotics

Police Station, CID (Crime) submitted report on 20.03.2023. The illicit article suspected to be ganja weighing 2.300 kgs was seized from the possession of the applicant/accused and after weighing and packing, the same was sealed in the presence of the applicant/accused and witnesses. Accordingly, a case under Section 20 (b)(ii)(B) of the ND&PS Act, 1985 was registered and after completion of the investigation, Charge-sheet was submitted on 15.05.2023. Thereafter, the trial commenced and it is submitted at the bar that at present, 3 (three) prosecution witnesses have already adduced their evidences.

3. The accused/applicant had filed Bail Application No. 699/2023 before the learned Judge, Special Court, ND&PS Act, 1895 on 11.04.2023 and was enlarged on interim bail w.e.f. 11.04.2023 to 11.07.2023. However, the application for extension of interim bail on 11.07.2023 was rejected by the learned Judge, Special Court, ND&PS Act, 1895. Thereafter, the accused/applicant was again taken into judicial custody and since then, he is in jail.

4. Mr. C. Lalfakzuala, learned counsel appearing on behalf of the accused/applicant submits that there is no prima facie case made out on the basis of the materials on record against the accused/applicant and that the Investigating Agency has failed to comply the mandatory provisions of law in respect of search and seizure of the contraband articles allegedly from the possession of the accused/applicant and he further refers to the cross examination of PW-1, ASI Ramfangzauva, Seizing Officer in the instant case to show that he did not have a search warrant at the time of seizure and arrest and also that there is nothing on record that PW-1 was authorized by the Officers mentioned in Section 41 of the ND&PS Act.

5. Mr. C. Lalfakzuala, learned counsel further by referring to the evidences adduced by PW Nos. 2 & 3 submitted that red bag allegedly from which contraband article was seized has not been produced before the Court and identified by the seizure witnesses and hence the prosecution has failed to prove the veracity of the recovery and seizure of the contraband articles from the possession of the accused/applicant.

6. Mr. C. Lalfakzuala, learned counsel further submits that the accused/applicant is a hard working student and is a recipient of Ishan Uday Fellowship Current under the Scheme of University Grants Commission and since only 3 (three) witnesses having been examined till date, it is not likely that the trial will be completed soon, therefore, unless the accused/applicant is release on bail, he shall not be able to pursue his educational studies which will severely affect his career. He further submits that since the quantity of ganja allegedly seized from the possession of the accused/applicant is intermediate quantity and as such, the instant bail application is not restricted by the strict rigorous of Section 37(1)(b)(ii) of the ND&PS Act, 1985.

7. On the other hand, Mrs. Mary L. Khiangte, learned Addl. Public Prosecutor strongly opposes the petition for bail and submits that it is clear from the materials on record that the contraband articles have been seized from the possession of the accused/applicant and hence, a clear case under ND&PS Act has been made out against the accused/applicant.

8. I have considered the submissions made by both the counsels and also have perused the materials on record.

9. Upon careful scrutiny of the same, it appears that the contraband articles recovered from the accused/petitioner are not of commercial quantity. Investigation is already completed and the trial does not appear to be concluded soon. Considering the facts and circumstances of the case in totality, the petitioner is granted bail on furnishing a bail bond of Rs. 15,000/- (Rupees Fifteen Thousand) and one local surety of like amount to the satisfaction of the learned Special Court, ND&PS Act, Aizawl.

10. The Bail Application is accordingly allowed.

11. It is clarified that the observation made hereunder shall not be construed as an expression of opinion on the merits of the case.

JUDGE

Comparing Assistant