

GAHC030006382023



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

Case No. : Bail Appln./61/2023

Sh. Lalliankhuma
Zokhawthar, Mizoram

VERSUS

State of Mizoram
Aizawl, Mizoram

Advocate for the Petitioner : Ms. Lalngaihsaki Fanai

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 filed by the petitioner.

2. The case of the prosecution in brief is that on 22.11.2022 at 2:40 PM, an written FIR was submitted by S.I Lalsangbera (40) to the effect that on same day, i.e., 22.11.2022 verbal information was received from a reliable person, who said that same evening, he saw one Maxi Cab (Sumo) stopping on the roadside along MZU Road, Tanhril (about 300 mtrs before reaching Six Miles Restaurant from Ramrikawn side) and then some persons got out the vehicle carrying some parcels and suspiciously disposed off the parcels amongst the bushes about 12 metres down from the main road nearby a jhum hut. Thus, S.I Lalsangbera and party proceeded to the spot on being led by the informant as the reported parcels were highly suspected to contain contraband drugs. On reaching the spot, search was conducted and they found a suspiciously parcel hidden in the bushes about 7 metres down from the jhum hut located on the side of the main road. The parcel is large multi coloured cloth woven into a sack in which there are 215 soap cases containing powder suspected to be heroin. Weighing of the seized suspected heroin was done and the total weight is 2.760 kgs.

3. Accordingly, Vaivakawn PS Case No. 410/22 dated 22.11.2022 under Section 21(c) of the ND&PS Act was registered and during investigation, three

persons namely F. Lalnunpuia, Lalnunsangi and Thawngnghina were arrested on 22.11.2022 at 3:20 PM. Thereafter, on 01.12.2022 on the basis of the statement rendered by the driver of the vehicle in question, the accused/applicant was arrested. After completion of the investigation, Charge-sheet was submitted under Sections 21(c)/28/29 of the ND&PS Act, 1895. Thereafter, the trial has accordingly commenced.

4. Ms. Lalngaihsaki Fanai, learned counsel for the accused/applicant submits that the accused/applicant was arrested in the light of the statement rendered by the driver of such vehicle and the accused/applicant has no conscious possession and knowledge regarding the transport of contraband substance but his driver used his vehicle 207 Yodha. He submits that one person named Biaka hired the accused/applicant's vehicle from Zokhawthar to Aizawl for transporting plastic goods to be delivered to Lalnunsangi in Aizawl, Mizoram. She further submits that the accused/applicant is falsely implicated in the instant case and was forced to make statements against himself and with regard to the facts and circumstances of the case as he was threatened and tortured during the interrogation/remand in Police custody.

5. On the other hand, Mrs. Linda L. Fambawl, learned Addl. Public Prosecutor strongly opposes the prayer for bail. She submits that from the statement made by co-accused Lalnunsangi and the driver Laldawngliana, the role of the accused/applicant has been established.

6. I have duly considered the submissions made by both the parties and I have also perused the materials available on record.

7. It appears from the Charge-sheet that an information was received to the effect that some persons (presumably the driver and one passenger) got out the vehicle carrying some parcels and suspiciously disposed off the parcels amongst the bushes about 12 metres down from the main road nearby a jhum house from where ultimately the contraband articles have been seized.

8. It appears that the driver of the vehicle, though as per the case of the prosecution, itself had tried to dispose off the parcel which ultimately was seized and from which the contraband articles were found was discharged on 15.12.2022 in terms of the discharge application. It further appears that on the basis of the allegation made in the statement of the said driver, the present accused/applicant has been implicated. There is no other material besides the statements of the driver and one Lalnunsangi, co-accused against the accused/applicant. No recovery was made from the possession of the accused/applicant.

9. In the absence of any contraband articles found in the conscious possession of the accused/applicant, I am of the opinion that mere reliance of the opinion of the co-accused and the driver, who now stands discharged, is not sufficient enough to make out a case against the accused/applicant. As such, this Court is of the opinion that there are reasonable grounds for believing that the accused/applicant is not guilty of such offence and this Court is accordingly of the prima facie opinion that a strong case has been made out by the accused/applicant for his release on bail. There is also nothing on record to indicate that the accused/applicant if release on bail is likely to commit any offence.

10. In the result, the present application is allowed and the accused/applicant is ordered to be released on regular bail in connection with the offence being Criminal Trial No. 941/2023 dated 01.12.2022 under Sections 21(c)/28/29 of the ND&PS Act on executing of 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, Mizoram. 6

11. The bail application is accordingly allowed.

12. 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