

GAHC030006782023



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

Case No. : Bail Appln./70/2023

Sh. Salman Uddin Laskar and Anr.
S/o Saraf Uddin Laskar
R/o Katlicheera, Hailakandi District, Assam.

VERSUS

The State of Mizoram
r/b the Secy. to the Govt. of Mizoram, Excise and Narcotics Department, Aizawl
Mizoram

Advocate for the Petitioner : Mr. Ali Hussain

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

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

14.12.2023

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

2. The case of the prosecution is that the applicants were arrested on 11.08.2023 at 10:30 am in connection with the seizure of 1.314 kgs of heroin kept in soap cases which was further kept in two gallons (blue and black colour). As per the seizure and arrest memo, the illicit articles were seized at the

outskirt of Keifang. The seized articles marked as S-1 to S-11 were recovered from inside the blue colour plastic gallon and S-12 to S-105 from black colour gallon which was carried on the roof of the seized Bolero Pick Up vehicle bearing Registration No. AS-11 EC-5417. Alongwith it, a Swift Car bearing Registration No. AS-11 Z-4750 was also seized. As per seizing Officer, he received a report on 10.08.2023 at around 9:00 pm from his source stating that one non-Mizo person named Monir Uddin and his friend transported some quantity of heroin from Zokhawthar and requested him to take further necessary action as per law. The said Monir Uddin was located and intercepted at Keifang alongwith his friend while driving Swift Car BR No. AS-11-Z-4750. During that time, one Bolero pick-up vehicle BR No. AS-11-EC-5417 passed by and the driver of the Bolero Pickup and Monir Uddin and his friend gave signal to each other. The seizing Officer then checked the Bolero Pickup vehicle and recovered 105 soap cases containing suspected heroin. Accordingly, Excise Case No. 224/2023 dated 12.08.2023 under Section 21(c) of the ND&PS Act has been registered against the applicant i.e., Sh. Golam Wazid Barbhuiya alongwith, co-accused, namely, Monir Uddin Laskar, Salman Uddin Laskar, Burhan Uddin Tabadar, Mayajul Hoqu Barbhuiya and the investigation has already been completed and the trial has commenced.

3. Mr. Ali Hussain, learned counsel appearing on behalf of the applicants submits that the applicants have been languishing in Jail since the date of their arrest i.e., 11.08.2023 for alleged commission of offence under Section 21(c) of the ND&PS Act, 1985. He further submits that the applicants were innocent of the offence charge against them and have never indulged in any kind of criminal activities and have no previous records and this is the first time that they have been arrayed as an accused.

4. By referring to the seizure and arrest memo dated 11.08.2023 and the report of seizure and arrest submitted to the Officer-in-Charge, Anti Narcotic Squad of Excise & Narcotics, Aizawl, he further submits that there are no statements or allegations connecting the applicants with the seizure of 1.314 kgs from the said Bolero vehicle. The applicants were not travelling in the said Bolero vehicle from where the said contraband articles have been seized. The applicants were travelling in another vehicle (Swift car) and hence, were not aware of the contraband articles seized from the Bolero vehicle.

5. On the other hand, Mrs. Mary L. Khiangte, learned Addl. Public Prosecutor for the State strongly opposes the prayer for bail.

6. By referring to the FIR (Annexure-2) as well as the charge-sheet (Annexure-6), she submits that there are materials to indicate that the applicants though were travelling in the said Swift vehicle had conscious possession of the contraband articles seized from the said Bolero vehicle.

7. Mr. Ali Hussain, learned counsel counters the said argument of the Addl. Public Prosecutor, by submitting that the applicants in the instant case cannot by any stretch of imagination be said to have conscious possession of the contraband articles seized from a vehicle in which they were not present and in this regard, references are made to the decision of the Apex Court in the cases of (i) *Ismailkhan Aiyubkhan Pathan Vs. State of Gujarat* reported in (2000) 10 SCC 257 at para 4, 5 and 8, and (ii) *Avtar Singh & Others Vs. State of Punjab*, reported in (2002) 7 SCC 419 para 6 and to the decision of this Court in the case of *Onyx Maiphok & Ors Vs. State of Assam & Another* reported in 2010 (4) GLT 565 at para 10, 11 and 12.

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

9. It appears that the applicant was not travelling in the said Bolero vehicle from where the contraband articles had been seized. Further, there are no materials to show that there was nexus in between the applicants and the co-accused from whose possession, the said contraband articles have been recovered. No phone call data has been collected during the course of the investigation. It appears from the charge-sheet submitted that the Investigating Officer, after collection of investigation has found a prima facie case under Section 21(c) of ND&PS Act, 1985 only against the applicants for illegal possession and transporting of the contraband articles and has accordingly charged the applicants under Section 21(c) of the ND&PS Act. The applicants were not charged under Section 29 of the ND&PS Act.

10. Section 21(c) of the ND&PS Act, provides as hereunder:-

“21. Whoever, in contravention of any provision of this Act or any rule or order made or condition of licence granted thereunder, manufactures, possesses, sells, purchases, transports, imports inter-state, exports inter-state or uses any manufactured drug or any preparation containing any manufactured drug shall be punishable,-

c) where the contravention involves commercial quantity, with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years and shall also be liable to fine which shall not be less than one lakh rupees but which may extend to two lakh rupees;

Provided that the Court may, for reasons to be recorded in the judgment, impose a fine exceeding two lakh rupees.”

In order to bring home the charge of Section 21(c), either, manufacturing, possession, selling, purchasing, transporting, etc, as the case may be, of any manufactured drugs has to be established.

11. The question therefore arises for consideration is whether the applicants can be said to have conscious possession of the said contraband articles recovered from another vehicle, where they were not present. In the case of *Union of India Vs. Md. Nawaz Khan*, reported in (2021) 10 SCC at page 100, the Apex Court has held in paragraph 26 as hereunder:-

“What amounts to “conscious possession” was also considered in Dharampal Singh Vs. State of Punjab, where it was held that the knowledge of possession of contraband has to be gleaned from the facts and circumstances of a case. The standard of conscious possession would be different in case of a public transport vehicle with several persons as opposed to a private vehicle with a few persons known to one another. In Mohan Lal Vs. State of Rajasthan, this Court also observed that the term “possession” could mean physical possession with animus; custody over the prohibited substances with animus; exercise of dominion and control as a result of concealment, or personal knowledge as to the existence of the contraband and the intention based on this knowledge.”

12. ‘Possession’ in terms of the aforesaid decision of the Apex Court may not mean physical possession of the contraband articles but also mean personal knowledge as to the existence of the contraband and the intention based on this knowledge. In the present case, the contraband articles have not been seized from the vehicle in which the applicants were travelling. The Investigating Officer has arrested the applicants on the basis of suspicion. The vehicle in this case is admittedly a private vehicle. There are no materials on record to indicate

that the applicants had personal knowledge as to the existence of the seized contraband articles in the said Bolero vehicle. In the absence of such materials of knowledge/intention against the applicants, no prima-facie case for transportation of such contraband articles by the applicants can be reasonably be said to have been made out. As such, the argument of Mrs. Mary L. Khiangte, learned Addl. Public Prosecutor to the effect that the applicants had conscious possession of what is being transported in the Bolero vehicle cannot be accepted. Further, the fact that the concerned Investigation Officer has not found any materials to charge the applicants under Section 29 of the ND&PS Act, is suggestive of the fact that the applicants have no role to play in transporting the said contraband articles and as such, not a conspirator or abettor to the crime in question.

13. The ND&PS Act has to be construed in the back drop of Article 21. The provision for being released on bail draws an appropriate balance between public interest in the administration of justice and the protection of individual pending adjudication of the trial. There are no materials on record to indicate that the applicants when released are likely to commit any offence. Further, the trial is not likely to conclude soon.

14. Upon analyzing and considering the totality of the case, as a whole, as well as considering the materials available on record, this Court is of the opinion that there are reasonable grounds for believing that the appellants are not guilty of such offence and that they are not likely to commit any offence while on bail.

15. In the result, the applicants were granted bail.

16. Accordingly, the applicants/accused named above, is ordered to be

released on bail in connection with an offence being Excise Case No. 224/2023 dated 12.08.2023 under Section 21(c) of the ND&PS Act on furnishing bail bond of Rs. 30,000/- (Rupees Thirty thousand Only) with two suitable sureties of the like amount, to the satisfaction of the jurisdictional Special Judge, under the ND&PS Act and subject to the conditions that the applicants shall;

- (i) Not take undue advantage of liberty or misuse liberty;
- (ii) Not act in a manner injurious to the interest of the prosecution;
- (iii) Surrender passport, if any, to the Special Court, ND&PS Act, Aizawl within a week;
- (iv) Not leave India without prior permission of the Special Judge, Special Court, ND&PS Act, Aizawl;
- (v) Appear regularly before the Special Court, ND&PS Act, Aizawl on all dates to be fixed from time to time till the case is disposed of.
- (vi) Furnish latest and permanent address of residence as well as mobile number to the Investigating Officer and also to the Court at the time of furnishing bail bond and shall not change the residence without prior permission of the Special Court, ND&PS Act, Aizawl.
- (vii) Shall refrain from committing any offences similar to the one of which they are accused.

17. It is needless to clarify that, any observations made in this order is tentative and for the purpose of disposal of this bail application only and shall not be used for any other purpose, including in the pending trial of the case.

None of the observations shall have any bearing on any other proceedings.

The bail application accordingly stands allowed.

JUDGE

Comparing Assistant