

GAHC030006872023



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

Case No. : Bail Appln./75/2023

Sh. Lalrindika Sailo
S/o Lalbana
R/o Zion Veng, Tlangsam, Champhai, Mizoram.

VERSUS

The State of Mizoram and Anr.
r/b the Secy. to the Govt. of Mizoram, Excise and Narcotic Department, Aizawl,
Mizoram. 2:The Officer-in-Charge
Anti-Narcotic Squa

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

14.12.2023

Heard Ms. Mercy Lalhriattluangi, learned counsel for the applicant. Also heard Mrs. Mary L. Khiangte, learned Addl. Public Prosecutor appearing for the State respondents.

2. This is a bail application under Section 37 of the ND&PS Act read with Section 439 Cr.PC praying for enlargement of the applicant Mr. Lalrindika Sailo

on bail. The applicant was arrested under Section 21(c) of the ND&PS Act, 1985 on 07.07.2023 at 4:00 P.M due to his alleged involvement in the seizure of 4.085 kgs of suspected heroin. It appears that the said heroin was seized on 02.07.2023 at 10:30 P.M at Sairang road, Chaltlang Lily Veng, Aizawl, Mizoram from Sh. Abu Saleh Md. and Sh. Samin Aktar Laskar and that they were arrested on the same date, time and place by the Excise & Narcotics personnel. The seized articles were kept in 362 green soap cases which were all wrapped with white polythene and concealed inside 11 aluminium frames. Accordingly, Excise Case No. EX-N-189/2023 dated 03.07.2023 under Section 21(c) of ND&PS Act, 1985 was registered. However, Sh. Samin Aktar Laskar was released as no prima facie case was found against him by the Excise & Narcotics personnel. Thereafter, the applicant was arrested as stated above on 07.07.2023 at 4:00 P.M. Subsequently, Kaplianchnunga and Lalramnghaka were arrested on 28.10.2023 at 2:00 P.M at Vengsang, Champhai in connection with the abovementioned Excise case. Accordingly, investigation was completed and Charge-sheet was filed under Section 29 of the ND&PS Act, 1985 read with Section 21(c) of the same Act.

3. Ms. Mercy Lalhriattluangi, learned counsel for the applicant submits that the applicant has been languishing in jail since the date of his arrest i.e., 07.07.2023 and that he is innocent of the offence charged against him and has never indulged in any kind of criminal activities and has no previous criminal record. She further argued that there is no evidence on record to prove that the applicant is the owner of the illicit articles or is involved in the case except the information recorded by the Arresting Officer to the effect that the applicant is involved in the case. She further submits that the statements made before the Excise & Narcotics Officer does not make out the involvement of the applicant

for an offence under Section 29 read with Section 21(c) of the ND&PS Act, 1985 and that such statements cannot be treated as evidence and therefore, the applicant is required to be released on bail.

4. In support of the aforesaid submission, the learned counsel relied upon the decision of the Apex Court in the case of *Ismailkhan Aiyubkhan Pathan Vs. State of Gujarat*, reported in (2000) 10 SCC 257.

5. On the other hand, Mrs. Mary L. Khiangte, learned Addl. Public Prosecutor strongly opposes the prayer for bail. By referring to the Charge-sheet, Mrs. Mary L. Khiangte argues that there are sufficient materials to indicate that not only the applicant was involved in procuring the contraband articles but has also transported the same from Tlangsam Village to Champhai and also received money from the co-accused Sh. Abu Saleh.

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

7. A careful scrutiny of the matter indicates that while the accused Sh. Abu Saleh was in custody, the applicant was continuously contacting the said accused. There are also materials to suggest that the applicant is one of the accomplices of the said accused Sh. Abu Saleh. There are also materials available on record to indicate that Sh. Abu Saleh through his accomplice Sh. Kaplianchnunga contacted the applicant to arrange for Kuli who could transport the contraband articles from Myanmar, Bulfek Village to Tlangsam Village.

8. It further appears that though the applicant could not find a suitable person to do the job, accused Sh. Kaplianchnunga engaged his brother-in-law Sh. Lalramnghaka (co-accused) to make the transport. Further, there are

materials to indicate that after the said contraband articles entered into Tlangsam Village, the same were delivered to the accused Sh. Kaplianichhunga and the applicant, who were already waiting for the said contraband articles. After receipt of the said contraband articles, it appears that the same was carried to Champhai by using the car of the applicant. There are also materials available on record to indicate that the co-accused Sh. Abu Saleh made a payment of Rs. 10,000/- to the applicant on 30.06.2023 to him.

9. Considering the totality of the facts and circumstances of the instant case, the involvement of the applicant in the charge offence, cannot be ruled out. The materials available on record indicate that the applicant was aware of the seized contraband articles. It is well settled that in terms of Section 20 (b) of the ND&PS Act, possession in order to make possession of contraband articles illicit, there must be a conscious possession. The word conscious means awareness about a particular fact. It is a state of mind which is deliberate or intended. In the present case, the applicant was fully aware of the contraband articles seized and was accomplished to the said offence. The evidence collected by the Investigating Officer establishes that the applicant knew about the transportation of the seized contraband articles and also had a role in the transportation and possession with conscious knowledge of what he was doing. The materials available on record indicate that this is not a case of no evidence. Ms. Mercy Lalhriattluangi, learned counsel by relying the decision in the case of *Ismailkhan Aiyubkhan Pathan Vs. State of Gujarat (supra)* argued that conviction under the ND&PS Act, 1985, cannot be sustained only on the basis of the accused being present from the place where the contraband articles have been seized. The facts in that case is that there was no evidence to indicate that the accused was dealing with narcotic drugs nor any evidence to implicate

except the presence of the accused in the room from which the narcotic substances were recovered. In that context, the Apex Court has held that there is no statutory provision for drawing any presumption that a person who was present at any particular place shall be presumed to be in possession of the narcotic or narcotic substance. In the present case, there are sufficient materials to show prima facie that the applicant is guilty. As such, the aforesaid case of the Apex Court is not applicable in the facts of this case.

10. In view of the above and keeping in mind the rigours of Section 37 of ND&PS Act, I am not inclined to grant bail to the applicant at this stage.

11. 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 trial of the case which is yet to start.

12. Accordingly, the bail application stands rejected.

JUDGE

Comparing Assistant