

GAHC030006932023



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

Case No. : Bail Appln./77/2023

Sh. Lalfelpuia
S/o Farliana
R/o Zokhawthar, Champhai District, Mizoram.

VERSUS

The State of Mizoram
Aizawl

Advocate for the Petitioner : Ms. Lalngaihsaki Fanai

Advocate for the Respondent :

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

14.12.2023

Heard Ms. Lalngaihsaki Fanai, learned counsel for the accused/applicant. Also heard Mrs. Mary. L. Khiangte, learned Addl. Public Prosecutor appearing for the State.

2. This is an application under Section 37 of the ND&PS Act, 1985 r/w Section 439 CrPC to release the accused/applicant on bail in connection with Criminal Trial No. 1032/2023 arising out of Kanhmun PS Case No. 2/2023 dated 13.01.2023 under

Sections 21(c)/29/25 of the ND&PS Act, 1985 read with Section 14 of Foreigners Act, 1946. The case of the prosecution is that on 13.01.2023, a written FIR was submitted by SI Lalchhuanmawia of CID(SB) to Officer-in-charge, Kanhmun Police Station, Mamit to the effect that on 12.01.2023 at 5:00 pm, a reliable information was received from reliable sources which stated that some unknown persons were strongly suspected of possessing/transporting contraband drugs at an area around Kanhmun, Mamit District, Mizoram which is an act of offence in contravention of the provision of the ND&PS Act, 1985. The matter was informed to Deputy Superintendent of Police, CID (SB) Mizoram, Aizawl, who immediately issued authorization letter under Section 41(2) of the ND&PS Act, authorizing him to enquire the matter and to intercept the vehicle, where he had seized 1.161 kgs of suspected Heroin from the joint possessions of the following persons namely (1) Lalrinfela (2) Lalsangkima (3) Lalfelpuia (present applicant) (4) Sanglianthuan (5) Israel Lalrinchhana. Accordingly, Kanhmun PS Case No. 2/2023 dated 13.01.2023 u/s 22(c)/25/29 of the ND&PS Act, 1985 was registered.

3. After completion of investigation, chargesheet was submitted on 10.05.2023. Thereafter, the trial has commenced and the deposition of the prosecution witnesses are going on.

4. Ms. Lalnghaihsaki Fanai, learned counsel for the accused/applicant submits that the petitioner is innocent and falsely implicate and he has no involvement in the instant case and nothing was recovered from the possession of the applicant. She further submits that the applicant was travelling in a Bolero vehicle from which no contraband articles had been seized. The contraband articles have been seized from one Tata Truck Bearing Registration No. MZ 05-5215.

5. Ms. Lalngaihsaki Fanai further submits that the driver of the seized Bolero vehicle even makes statement regarding the non-involvement of the present applicant and the statement is annexed at annexure No. 2 at page 15 A. Therefore, she submits that the accused/applicant be released on bail.

6. Mrs. Mary, learned Addl. Public Prosecutor fairly submits that there are no materials available on record to indicate the involvement of the applicant in the case. However, she prays that in case the applicant is released on bail, stringent conditions be imposed considering the fact that he is from Myanmar.

7. I have considered the submissions of both the counsels and perused the record of the case.

8. It appears from the record that the accused/applicant had accompanied the co-accused only to visit his relatives at Vairengte. There is no materials on record to indicate that the accused/applicant had knowledge of the contraband articles seized from the Tata Truck. That apart, the Investigating Officer has not produced any phone data or other materials to establish that the applicant had conscious possession of the seized contraband articles. In absence of such materials, this Court is of the opinion that the accused/applicant is prima facie not guilty of the offence. There is also no materials available on record to indicate that the accused/applicant is likely to commit any offence while on bail.

9. Considering the totality of the facts of the case, I am inclined to grant bail to the accused/applicant. Accordingly, the accused/applicant is ordered to be released on bail in connection with Criminal Trial No. 1032/2023 arising out of Kanhmun PS Case No. 2/2023 dated 13.01.2023 under Section 21(c)/29/25 of the ND&PS Act, 1985 read with Section 14 of Foreigners Act, 1946, on furnishing bail bond of Rs. 50,000/- (Rupees Fifty thousand Only) with two suitable sureties of the like amount, out of which one shall be a Government employee, to the satisfaction of the jurisdictional Special Judge, under the ND&PS Act, Aizawl 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) Shall regularly appear before the learned Trial Court 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.

10. 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