

GAHC030006942023



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

Case No. : Bail Appln./78/2023

Sh. Lalsangliana
S/o F. Rokhuma
R/o Chhing Veng, Aizawl, Mizoram.

VERSUS

The State of Mizoram
Aizawl

Advocate for the Petitioner : Ms. Lalngaihsaki Fanai

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

BEFORE
HONOURABLE MRS. JUSTICE MARLI VANKUNG
ORDER

Date : 15-12-2023

Heard Ms. Lalngaihsaki Fanai, learned counsel for the applicant/petitioner along with Mrs. Mary L. Khiangte, learned counsel for the State respondent.

This is an application filed under Section 439 Cr.PC read with Section 37 of ND & PS Act for enlargement of the accused/petitioner on bail in CrI. Trl. No.1729/22 arising out of Special Narcotic PS Case No.38/2022 under Section 21(c)/29 of the ND & PS Act, 1985.

The learned counsel for the petitioner submits that the petitioner was innocent of charge under Section 21(c)/29 of the ND & PS Act. She submits that the case is at its trial

stage and is still pending for evidence of the defence witnesses. She submits that this Court in its order dated 15.11.2023 passed in Bail Appln. No.52/2023 had dismissed the bail application on the ground that the trial of the case is at its final stage and accordingly dismissed and disposed of the Bail Application.

The learned counsel submits that till date the case is still pending since the defence witnesses were not present in the court on the fixed court date. The learned counsel submits that the evidence adduce so far does not implicate the instant petitioner who is simple a "Mutia/Labour" who was made to carry the paper cartoons/parcels in which 518 grams of heroin was seized. She submits that it is stated in the charge sheet that the petitioner was seen to have handed over. She further submits that the petitioner was implicated because he was seen in the CCTV footage. She submits that there is no CCTV footage extract in a desk enclosed in the charge sheet and therefore, the prosecution has no case against the instant petitioner.

She submits that the petitioner is innocent and the trial is not completed after period of 1 year and 3 months and the petitioner is being kept in judicial custody for a period more than 1 year and 3 months while he is innocent which is violation of his fundamental rights.

In support of her submission, the learned has cited the decision of the Apex Court in **Rabi Prakash Vs. The State of Odisha IN Special Leave to Appeal (Crl.) No(s) 4169/2023** and also cited **Mohd Muslim @ Hussain vs- State (NCT of Delhi) in Special Leave Petition (Crl.) No.(s) 915 of 2023**.

Mrs. Mary L. Kiangte, learned Addl. Public Prosecutor on the other hand submits that the case is now its final stage and the prosecution evidence adduce so far will able to prove the involvement of the petitioner for his conviction under Section 21(c)/29 of the ND&PS Act

since it has been clearly made out that he was involved in the transaction of the seized article.

Having heard the submissions made by the learned counsels for both the parties, this Court finds that the case before the Trial Court is at its final stage, wherein all the prosecution witnesses have been examined and only the defence witnesses are left to be examined. This Court finds that it would not be appropriate at this stage to examine the evidence adduced in the Court to see whether the prosecution has made out the case against the petitioner. On perusal of the judgment of the Apex Court in **Rabi Prakash (Supra)**, it is seen that the accused in the cited case was in custody for more than 3 years and that though the Trial had commenced in the case, only 1 out of 19 witnesses have been examined and the Apex Court observed that the conclusion of the Trial will take some more time. In **Mohd Muslim @ Hussain (Supra)**, the accused was suffering in **carcella** for over 7 years not criminal trial had hardly reached halfway mark. Thus, this Court finds that the above cited cases are different and not applicable in the instant case where the trial is almost complete.

In view of the above, this Court finds that no grounds have been made out for the release of the petitioner on bail at this stage. However, this Court find it appropriate to pass an orders that the Trial Court should not delay the disposal of the instant Criminal Trial No. 1729/2022 any further, considering that only the examination of DWs are left. Thus, the Trial Court is to make an endeavor to dispose of the Criminal Trial No. 1729/2022 arising out of Special Narcotics P.S. Case No. 38/2022 under Section 21(c)/29 of the ND&PS Act, 1985 within 2 (two) months from receiving a certified copy of this order.

Accordingly, Bail Application No. 78/2023 stands disposed of as above.

JUDGE

Comparing Assistant