

GAHC010067092024



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

Case No. : Bail Appln./973/2024

RAJEN PRADHAN @ LALREMRUATA
S/O GORE BAHADUR BHAJU @ GORE PRADHAN, R/O VILL- HARINAGAR,
P.O.-KANAKPUR, P.S.-JOYPUR, DIST- CACHAR, ASSAM, PIN-788006

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

Advocate for the Petitioner : MR. L R MAZUMDER, MR. A ISLAM

Advocate for the Respondent : PP, ASSAM,

BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA

ORDER

Date : 26.07.2024

Heard Mr. L. R. Mazumder, learned counsel for the petitioner. Also heard Mr. K. K. Parasar, learned Additional Public Prosecutor for the State respondent.

2. This is an application under Section 439 of the Code of Criminal Procedure,

1973 praying for grant of bail to the accused/petitioner, who has been arrested in connection with Silchar P.S. Case No. 3890/2019, corresponding to G.R. Case No. 5998/2019, under Sections 21(C)/29 of NDPS Act, 1985.

3. Scanned copy of the case record has already been received. Perused the same. Heard both sides.

4. It is submitted by Mr. Mazumder, learned counsel for the petitioner, that false and concocted allegations are brought against the present petitioner and he is not involved in the alleged offence. He is a labour by profession and on the day of incident also, he was asked by the driver of the alleged truck to work as a handyman and accordingly he accompanied with the driver. But he was not aware about any suspected contraband kept in the vehicle as alleged in the F.I.R. Further he submitted that he is in custody in connection with this case since 11.03.2024. More so, 2 (two) seizure witnesses are already been examined by the prosecution, who did not support the case of the prosecution and the seizure of the contraband, and thus, in absence of any proper seizure witness, Section 37 NDPS Act is not applicable as there is sufficient material for reasonable belief that the accused/petitioner is not involved in the alleged offence. Further he submitted that as the seizure witnesses did not support the prosecution case and also did not confirm the seizure, the chance of conviction is very bleak and considering this aspect also, he may be released on bail.

5. Mr. Mazumder, learned counsel for the petitioner, further submitted that the accused/petitioner was initially arrested in connection with this case on 08.12.2019 and considering his period of detention and ground of illness of his

mother, his bail prayer was considered by the learned Trial Court below and vide order dated 17.03.2020, he was enlarged on bail. Thereafter, he was regularly appearing before the Court, but as he was arrested in connection with Zokhawathar P.S. Case No. 28/2019 and was in Champai Jail, Mizoram, he could not appear before the learned Special Judge, Cachar, Silchar and hence, the NBWA was issued against him and subsequently he got arrested on the strength of NBWA in connection with this case on 17.03.2020. However, he was granted with interim bail by the learned Special Judge, NDPS, Champai District, Mizoram in the above referred case on 22.02.2024 considering his health issues and thereafter on the strength of the NBWA, he got arrested in connection with this case. Mr. Mazumder further submitted that till date, only 2 (two) witnesses have been examined by the learned Special Judge, Cachar, Silchar and hence, there is no scope of conclusion of trial within a short period and hence, considering his length of detention, he may be enlarged on bail. He will regularly appear before the learned Trial Court below as and when the date is fixed. Further he submitted that if he remains in custody in connection with the present case, he will not be able to appear before the learned Special Judge, Champai District, Mizoram. In support of his case, Mr. Mazumder also relied on a decision of co-ordinate Bench of this Court passed in Bail Appln. No. 2117/2023, wherein the accused was allowed to go on bail considering his health issues.

6. In this context, Mr. K. K. Parasar, learned Additional Public Prosecutor, has submitted that at the time of granting bail to the present accused/petitioner on 17.03.2020 by the learned Court below, the case was not Charge-Sheeted and it was not within the knowledge of the learned Court below that he is also wanted in connection with another case which is pending before the Court of learned

Special Judge, Champai District, Mizoram. In the same time, while granting interim bail by the learned Special Judge, Champai District, Mizoram, the said Court below was also not aware about the pendency of the present case against the petitioner as there is no reflection in its order that 2 (two) cases are pending against the present accused/petitioner. He is a habitual offender and hence, considering the medical ground, his bail cannot be considered. More so, the surgery can also be conducted in GMCH and in that regard, the jail authority can also take proper steps for his medical treatment.

7. Mr. Parasar, learned Additional Public Prosecutor, further relied on the decision of the Apex Court passed in the case of **The State of Meghalaya Vs. Lalrintluanga Sailo & Anr. [Special Leave to Appeal (Crl.) No(s). 16021/2023]**, wherein the Apex Court has expressed the view that the bail cannot be granted even to a HIV patient only on the sole reason of illness and if the twin conditions under Section 37 NDPS Act are not satisfied. Further it is held that while considering the application for bail made by an accused involved in an offence under NDPS Act a liberal approach ignoring the mandate under Section 37 NDPS Act is impermissible. He further stressed on paragraph Nos. 8 & 10 of the judgment, which read as under:

"8. Thus, the provisions under Section 37(1)(b)(ii) of the NDPS Act and the decisions referred supra revealing the consistent view of this Court that while considering the application for bail made by an accused involved in an offence under NDPS Act a liberal approach ignoring the mandate under Section 37 of the NDPS Act is impermissible. Recording a finding mandated under Section 37 of the NDPS Act, which is sine qua non for granting bail to an accused under the NDPS Act cannot be avoided while passing orders on such applications.

10. The subject FIR viz., FIR No. 06(02)23 under Section(s) 21(c)/29 of the NDPS Act,

would reveal that the quantity of the contraband involved is 1.040 kgs of heroin. The impugned order granting bail to accused-Smt. X, dated 29.09.2023 would reveal, this time also, the bail was granted on the ground that she is suffering from HIV and conspicuously, without adverting to the mandate under Section 37(1)(b)(ii), NDPS Act, even after 6 taking note of the fact that the rigour of Section 37, NDPS Act, calls for consideration in view of the involvement of commercial quantity of the contraband substance. When the accused is involved in offences under Section 21(c)/29 of NDPS Act, more than one occasion and when the quantity of the contraband substance viz., heroin is 1.040 Kgs, much above the commercial quantity, then the non-consideration of the provisions under Section 37, NDPS Act, has to be taken as a very serious lapse. In cases of like nature, granting bail solely on the ground mentioned, relying on the decision in Bhawani Singh v. State of Rajasthan³ would not only go against the spirit of the said decision but also would give a wrong message to the society that being a patient of such a disease is a license to indulge in such serious offences with impunity. In the contextual situation it is to be noted that in Bhawani Singh's case the offence(s) involved was not one under the NDPS Act. We have no hesitation to say that in the above circumstances it can only be held that the twin conditions under Section 37 of the NDPS Act, are not satisfied and on the sole reason that the accused is a HIV patient, cannot be a reason to enlarge her on bail. Since the impugned order was passed without adhering to the said provision and in view of the rigour thereunder the accused-Smt.X is not entitled to be released on bail, the impugned order invites interference."

8. Accordingly, Mr. Parasar, learned Additional Public Prosecutor, raised vehement objection and submitted that it is not at all a fit case to enlarge the accused/petitioner to go on bail at this stage.

9. After hearing the submissions made by the learned counsels for both sides, it is seen that in the present case, the accused/petitioner is in custody since 11.03.2024 and he was produced before this Court from Mizoram in compliance of Order dated 13.02.2024, passed by the learned Special Judge, Cachar, Silchar. Further from the orders passed by the learned Special Judge, Cachar, Silchar as well as the order passed by the learned Special Judge, Champai, Mizoram, it is seen that there is no reflection in the order in regards to pendency of the cases against the present petitioner. Thus, the submission

made by the learned Additional Public Prosecutor that the learned Courts below were not aware about the pendency of the other cases against the accused/petitioner cannot be out rightly denied or rejected. Thus, it is seen that the present accused/petitioner is not only wanted in the present case, but he is also wanted in connection with Zokhawathar P.S. Case No. 28/2019 and thus, the accused had a criminal antecedent and also can be considered as a habitual offender. It is a fact that 2 (two) PWs, i.e. the seizure witnesses, are already been examined by the prosecution, but they did not support the case of the prosecution in regards to seizure of the contraband. But, it is seen that the vital witnesses of the prosecution are yet to be examined and the case record and the Case Diary also reveals sufficient incriminating materials against the present accused/petitioner. Thus, there cannot be any reason to believe that the accused is not guilty of the offence nor there is any reason to believe that he will not commit similar kind of offence while on bail. From the record, it is seen that he was arrested in connection with Zokhawathar P.S. Case No. 28/2019 while he was on bail in the present case. Thus, the twin condition which is required under Section 37 NDPS Act is not present in this case to consider his bail application. More so, it is seen that in both the matters, the accused/petitioner was arrested in connection with the contrabands of commercial quantity.

10. The accused/petitioner may suffer with some health issues and it may need surgery, but that cannot be the sole ground to consider his bail application in view of the judgment passed by the Apex Court in the case of **Lalrintluanga Sailo (supra)**, wherein the bail petition for a HIV patient was rejected by the Apex Court. However, the jail authority can provide proper medical treatment to

the accused/petitioner and also may arrange for operation in GMCH or other medical institution as advised by the Doctor. But, considering the entire aspects of the case, viz-a-viz the nature and gravity of offence and also considering the criminal antecedents of the present accused/ petitioner, this Court is of opinion that it is not at all a fit case to extend the privilege of bail to the present accused/petitioner at this stage and accordingly the same stands rejected.

11. However, the learned Court below shall make an endeavor for speedy trial of the case and shall dispose of the matter as expeditiously as possible.

12. In terms of above, this bail application stands disposed of.

JUDGE

Comparing Assistant