

GAHC010199722024



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

Case No. : Bail Appln./2941/2024

LALLIAN SANGA
S/O LATE ZAKHARA, R/O VILL AND P.S.-ZOKHAWTHAR, DIST- CHAMPAI,
MIZORAM

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

Advocate for the Petitioner : MR. M A CHOUDHURY, MR A AHMED, U U KHAN, MR. A AHMED

Advocate for the Respondent : PP, ASSAM,

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

12.11.2024

- 1.** Heard Mr. M.A. Choudhury, learned counsel for the petitioner. Also heard Mr. D.P. Goswami, learned Additional Public Prosecutor, Assam.
- 2.** This application under Section 483 of the BNSS, 2023 has been

filed by the petitioner, namely, Lallian Sanga, who has been detained behind the bars since 10.07.2023(for last more than 1 year 4 months) in connection with Special (NDPS) Case No. 75/2023.

3. The gist of accusation in this case is that on 26.06.2023, one Nilov Jyoti Nath, SI of Police, had lodged an FIR before the Officer-In-Charge of Ramkrishna Nagar Police Station, Karimganj, *inter-alia*, alleging that an information was received from one Partha Protim Das, IPS, Superintendent of Police, Karimganj, over telephone, on 25.06.2023, at about 6:45 PM, that a huge quantity of drugs would be transported from Hailakandi to Karimganj via Ishancherra. After receiving the said information, a police team proceeded towards Ishancherra and conducted a naka checking. At around 8:10 PM, a white colour Maruti Suzuki S-Presso vehicle bearing Registration No. AS 11 Y 7668 was intercepted while it was coming from Hailakandi side. There were two occupants inside the vehicle, namely, Ahad Uddin and one Makbul Hussain. The said vehicle was searched in presence of independent witnesses. During search operation, 200 Nos. of soap cases containing suspected heroin were found from the secret chambers behind the rear seat of the vehicle. On weighing the recovered heroin, it was found to weigh 2,272.61 grams. Both the occupants of the vehicle were apprehended.

4. During interrogation, the apprehended person disclosed that one Kajal Ahmed @ Zahir, engaged them to purchase heroin from Aizawl. On the basis of information received during interrogation of the apprehended accused persons, the third accused, namely, Kajal Ahmed @ Zahir, was also arrested. Later on, during investigation, the Call Detail

Records and WhatsApp chat analysis of the mobile phones of arrested accused Makbul Hussain was done and it was found that he was in contact with two phone numbers namely, 9362628733 and 9362627600, which were found to be the phone number of one J. Lalthawmmawia and his wife.

5. It is also the case of the prosecution that on the analysis of WhatsApp conversation, it was found that the apprehended accused Makbul Hussain was having conversation with regard to heroin smuggling with the said Lalthawmmawia and his brother. The present petitioner is the brother of the said Lalthawmmawia.

6. On the basis of the said information, a raid was conducted in Zowkhathar village, in the Champai district of Mizoram, where the J. Lalthawmmawia used to reside. But, he could not be found during the raid. However, his brother, i.e. the present petitioner was apprehended, along with a cash amount of Rs. 11,50,000/- which was suspected to be the proceeds of heroin trafficking.

7. The learned counsel for the petitioner has submitted that the petitioner has been apprehended merely on the basis of suspicion only and no admissible evidence against him is there on record. He has submitted that the petitioner has not been named in the FIR. The only allegation is that there are certain WhatsApp conversations between his brother and the apprehended accused Makbul Hussain.

8. The learned counsel for the petitioner has also submitted that the mobile numbers which were disclosed during interrogation by Makbul

Hussain also does not belong to the present petitioner, as it is apparent that same were of the brother and the sister-in-law of the present petitioner.

9. The learned counsel for the petitioner has also submitted that the prosecution side has produced nothing to link the recovered cash with the contraband seized in this case.

10. It is submitted by the learned counsel for the petitioner that the petitioner has taken a loan for purchasing a Tata LPT vehicle for the purpose of his business and the recovered cash amount is the said loan amount. The learned counsel for the petitioner has also submitted that in the meanwhile, the co-accused, Kajal Ahmed @ Zahir, on the basis of whose statement the present petitioner has been apprehended, has already been allowed to go on bail by this Court, by order dated 19.12.2023 in Bail Application No. 3407/2023.

11. On the other hand, learned Additional Public Prosecutor has vehemently opposed the grant of bail to the present petitioner on the ground that the Call Detail Records analysis of the mobile phone of apprehended co-accused Makbul Hussain as well as WhatsApp chats by Makbul Hussain and the elder brother of the present petitioner indicates the involvement of present petitioner in the offence alleged in this case. He has also produced the scanned copy of the case diary of Ram Krishna Nagar P.S. Case No. 93/2023 which was requisitioned. However, only one screen shot of the WhatsApp chats, that too, in Mizo language was found available in the case diary, which does not indicates the involvement of the petitioner in the commission of offence involved in this case.

12. I have considered the submissions made by learned counsel for both the sides and have perused the materials available on records, including the scanned copy of the case diary of Ram Krishna Nagar P.S. Case No. 93/2023.

13. From the materials available on records, it appears that the seized contraband (heroin) was not recovered from the possession of the present petitioner. Moreover, none of the witnesses has implicated him in the offence involved in this case. The only reason for his arrest appears to be the fact that he happens to be the brother of one J. Lalthawmmawia and that a cash amount of Rs. 11,50,000/- was recovered from his possession, which is suspected to be the proceed of crime. However, it appears that apart from suspicion, no other admissible evidence is there against the present petitioner, implicating him in the offence alleged in the FIR, i.e. regarding the recovery of 2,272.61 grams of heroin from the possession of other two co-accused.

14. There is no material available on record to link the cash recovered from the present petitioner with the offence alleged in this case. Mere recovery of cash amount, in itself, would not lead to an assumption that the said amount is the proceed of any offence involving drug trafficking.

15. For reasons mentioned hereinabove, this Court is of considered opinion that for the purpose of consideration of the instant bail application, there are reasonable grounds for believing that the present petitioner is not guilty of offence involved in this case. Further, there is no materials on record to suggest that the petitioner has been involved in

similar offences on earlier occasions and therefore, if he is released on bail, it is unlikely that he would commit any offence while on bail. Hence, the embargo under Section 37 of the NDPS Act, 1985 in the considered opinion of this Court, is not applicable in this case.

16. Moreover, the present petitioner is detained behind the bars for more than one year four months and he is ready to face trial.

17. For the reasons mentioned hereinabove, the present petitioner, Lallian Sanga, is allowed to go on bail of Rs.1,00,000/- (Rupees one lakh) with 2(two) sureties of like amount, out of which one surety should be a government employee, to the satisfaction of the learned Special Judge, Karimganj with the following conditions:-

(i) That the petitioner shall regularly appear before the Trial Court on each and every date fixed in Special (NDPS) Case No. 75/2023. In case of default in appearing before the Trial Court without just cause by the petitioner, it would be good ground for cancellation of the bail granted to the present petitioner.

(ii) That the petitioner shall not leave the jurisdiction of the learned Special Judge, Karimganj without prior leave of the learned Special Judge, Karimganj.

(iii) That the petitioner shall not directly or indirectly make inducement, threat or promise to any person who is acquainted with the facts of this case so as to dissuade such person from deposing against him in the

pending trial against him.

18. It is hereby made clear that the observations made in this order are made only for the purpose of consideration of this bail application and it shall have no bearing during the trial of Special (NDPS) Case No. 75/2023 which is pending before the Court of learned Special Judge, Karimganj.

19. With the above observations, this bail application is hereby disposed of.

JUDGE

Comparing Assistant