

GAHC030000292024



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

Case No. : Bail Appln./4/2024

Sh. Ginzabak
Zokhawthar, Champhai District, Mizoram

VERSUS

State of Mizoram
Aizawl: The Officer-in-Charge
Anti Narcotic Drug Squad

Advocate for the Petitioner : Mr. J H Ramneihmawia

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

B E F O R E
HON'BLE MRS. JUSTICE MARLI VANKUNG
O R D E R

21.02.2024

Heard Mr. J.H. Ramneihmawia, learned counsel for the applicant along with Mrs. Linda L. Fambawl, learned Additional Public Prosecutor for the State respondent.

2. This is a bail application filed under Section 439 of the Criminal Procedure Code for releasing the applicant/petitioner on bail.

3. The learned counsel for the applicant submits that on 22.04.2023, the Excise & Narcotics Department on receiving the information from CADS (CYMA) that they suspected accused Lalramnghaka to possess some quantity of Heroin. Pursuant to this information, the Excise & Narcotics Department seized 130 grams of Heroin kept in 10 soap cases and arrested 2 (two) accused persons Sh. Lalramnghaka and Sh. Samson Vanlalmangaiha for possessing the illicit drugs. After interrogation one of the accused i.e., Sh. Lalramnghaka stated that he, along with the instant applicant, had gone to Myanmar to buy the seized article and that the instant petitioner is the owner of the seized article. Subsequently, the instant petitioner was arrested on 19.05.2023. The learned Trial Court had rejected the bail application vide its Order dated 18.12.2023 in Bail Application No. 2123/2023. Being aggrieved, the instant petitioner has approached this Court.

4. The learned counsel submits that the petitioner was innocent of the charge under Section 21(b) ND&PS Act and submits that he was arrested solely on the statement made by one of the co-accused, Sh. Lalramnghaka. He submits that nothing was seized from his possession and that the co-accused Sh. Lalramnghaka has now retracted his statement and stated in his letter dated 26.06.2023 that the instant petitioner is not involved in their case, but that he had named the petitioner only because the excise personnel had laid hands on him and he was forced to say that the petitioner was involved in the case, because during interrogation, they had checked his mobile phone and found the contact number of the instant petitioner who is actually a JIO/SIB, (MHA), Government of India, Aizawl Headquarters.

5. The learned counsel for the petitioner submits that this letter which is annexed as Annexure-12A dated 26.06.2023 clearly proves the innocent of the instant petitioner and prayed that he may be allowed to be released on bail. The learned counsel for the petitioner has cited the decision of this Court in Bail Application No. 61/2023 dated 04.12.2023, wherein the applicant/petitioner was allowed to be released on bail since nothing was seized from his possession. He has also cited the decision of the Apex Court in **Bharat Chaudhary Vs. Union of India**, reported in **(2021) 20 SCC 50**, wherein the Apex Court had allowed bail to the applicant in the absence of any psychotropic substance found in the conscience possession of the applicant.

6. Mrs. Mary L. Khiangte, learned Additional Public Prosecutor submits that the case is at its trial stage and the prosecution witnesses have yet to depose before the Court. She however, in all fairness admits that the co-accused Lalramnghaka has clarified that the instant petitioner is not involved in the instant case, which could weaken the prosecution case against the petitioner.

7. Having heard the submissions made by both the learned counsels for the parties and on considering the fact that prima facie it appears that the instant petitioner has been implicated in the case, based only on the statement made by the co-accused Lalramnghaka and also considering the fact that the said Lalramnghaka, has now made a statement retracting his previous statement, by stating that the instant petitioner is not involved in the instant case and also on considering the fact that the instant petitioner has been charged under Section 21(b) ND&PS Act, when nothing was found in his possession, this Court find it fit to allow the petitioner to be released on bail with a bail bond of Rs. 50,000/-

and with one surety of the like amount, who shall be to the satisfaction of the learned Trial Court.

8. Accordingly, Bail Application No. 4/2024 stands allowed and disposed of.

JUDGE

Comparing Assistant