

GAHC030000332024



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

Case No. : Bail Appln./5/2024

Sh. Abdul Karim and Anr.
Sakaibari, Darmanagar, Tripura 2: Sh. Shahin Ahmed
Nilam Bazar
Karimganj
Assa

VERSUS

The State of Mizoram and Anr.
Aizawl2:Officer-in-Charge
Anti-Narcotics Department
Mizoram
Aizawl
Aizaw

Advocate for the Petitioner : Mr C Lalfakzuala

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

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

12.02.2024

Heard Mr. C. Lalfakzuala, learned counsel for the accused/petitioners. Also heard Mrs. Linda L. Fambawl, learned Addl. Public Prosecutor, Mizoram for the State.

- 2.** This is an application under Section 37 of ND&PS Act, 1985 r/w Section 439 CrPC for enlargement of the accused/petitioners i.e. Sh. Abdul Karim and Sh. Shahin Ahmed on bail in respect of Excise & Narcotics Case No. SES-258/2023 dated 05.09.2023 registered under Section 21(c) of ND&PS Act, 1985 and corresponding to Criminal Trial No. 2069/2023.
- 3.** The brief case of the prosecution is that on 05.09.2023 at 12:30 pm, contraband heroin which were kept in 79 soap cases in an Alto vehicle was seized from the possession of accused No. 1. The Arresting Authority suspecting the accused petitioner Nos. 1, 2 alongwith the co-accused who were travelling in another vehicle i.e. Bolero Vehicle were involved, arrested them.
- 4.** Mr. C. Lalfakzuala, learned counsel for the accused/petitioners submits that the two petitioners who were travelling in the Bolero vehicle have been wrongly arrested and have no connection whatsoever with the seized contraband articles from another vehicle.
- 5.** Mrs. Linda L. Fambawl, learned Addl. Public Prosecutor strongly opposes the prayer for bail. She submits that on the basis of telephone calls, the seizing authority have arrested the accused petitioner Nos. 1 and 2.
- 6.** I have heard the submissions made at the bar and I have considered the materials available on the record.
- 7.** It appears that the contraband articles have been seized from one Alto vehicle from the possession of accused No. 1. Admittedly, the accused petitioners were travelling in another vehicle i.e. Bolero. Though it was submitted by Mrs. Linda L. Fambawl, learned Addl. Public Prosecutor that the arresting authority on the basis of phone calls have suspected the accused petitioners to be involved in the offence alleged, however, the Investigating Authority have not collected any phone calls data record. Further, there are no other adverse materials available on record to indicate

the involvement of the accused petitioners in the alleged offence. In the absence of any increminating materials against the petitioners, no offence under the alleged Section of ND&PS Act is made out. That being so, this Court is of the opinion that there are no reasonable grounds as of now for believing that the accused petitioners are guilty of the offence alleged. Further, it appears that the trial has already started and the next date is fixed for framing charge. Further, there are nothing adverse collected against the petitioners antecedent. Furthermore, there are no materials to indicate that in case the accused petitioners are granted bail, the petitioners would commit any offence again.

8. Therefore, it appears that there are reasonable grounds that the petitioners are not guilty of such offence.

9. Considering the totality of the matter vis-a-vis Article 21 of the Constitution of India, this Court is of the considered opinion that the petitioners are entitled to be released on regular bail.

10. Accordingly, the accused petitioners namely, Sh. Abdul Karim and Sh. Shahin Ahmed shall be released on bail in connection with the aforementioned case on furnishing a bail bond of Rs. 30,000/-(Rupees Thirty thousand) with two suitable sureties of like amount to the satisfaction of the jurisdictional learned Special Judge, under the ND&PS Act, Aizawl.

11. The direction for bail is for the subject to the conditions that the accused/ petitioners -

1) Shall not leave the territorial jurisdiction or jurisdiction of the learned Special Judge, under the ND&PS Act without prior permission from him.

2) Shall surrender her passport, visa etc, if any, in the Court of the learned jurisdictional Special Judge, ND&PS Act, Aizawl.

3) Shall regularly appear before the concerned Trial Court on all dates to be fixed from

time to time till the case is disposed.

4) Shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any Police Officer.

5) Shall not hamper and temper with the evidence of the case.

6) Shall not try to contact any of the witnesses by any mode including telephone, social media etc.

7) Shall furnish the present residential address with proof to the Trial Court and shall not change the said residence without prior permission of the Trial Court.

12. Be it mentioned that the observation made in course of this bail order shall not have any bearing on the independent judicial discretion of the Trial Court.

With the aforesaid direction and observation, the Bail Application stands disposed of.

JUDGE

Comparing Assistant