

GAHC030000382024



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

Case No. : Bail Appln./6/2024

Smt. Lalnunsiami
W/o Lalramnuna
R/o Electric Veng, Aizawl.

VERSUS

The State of Mizoram and 3 Ors.
r/b the Secretary to the Govt. of Mizoram, Home Department, Aizawl. 2:The
Officer-in-Charge
Special Narcotic PS

3:ASI Lalthlanfela (Complainant)
Special Narcotic PS

4:S.I. Lalbelthanga (I/O)
Special Narcotic P

Advocate for the Petitioner : Mr. S. Vanlalhriata

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

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

09.02.2024

Heard Mr. S. Vanlalhriata, learned counsel for the accused/petitioner. Also heard Mrs. Mary L. Khiangte, learned Addl. Public Prosecutor appearing for the State.

2. This is an application under Section 439 CrPC r/w Section 37 of ND&PS Act, 1985 to enlarge the accused/petitioner, namely Smt. Lalnunsiami @ Lalrinsiami on bail pending trial in Criminal Trial No. 1658/2022.

3. The case of the prosecution in brief is that on 28.07.2022 at around 11:30 AM, the ASI of the CID, Special Branch, Aizawl seized 1 Kg of Methamphetamine from the joint possession of one Tajju Uddin and Shahab Uddin. Accordingly, the two possessors were arrested and a case was registered under Sections 22(c)/29 of the ND&PS Act, 1985.

4. During investigation, the accused Shahab Uddin stated in his statement recorded under Section 67 of the ND&PS Act that the accused/petitioner had supplied the contraband articles to them. On the basis of the statement of the said accused, the accused/petitioner was arrested. Upon completion of investigation, chargesheet was submitted against the aforesaid two accused alongwith the petitioner. Thereafter, the trial commenced.

5. Mr. S. Vanlalhriata, learned counsel for the accused/petitioner submits that the accused/petitioner is totally innocent and has nothing to do with the contraband substance seized from the possession of the other two accused. He further submits that the accused/petitioner was arrested merely on the basis of the statement of the co-accused.

6. Mrs. Mary L. Khiangte, learned Addl. Public Prosecutor on the other hand strongly opposed the prayer of the bail. She submits that the co-accused has clearly implicated the present accused/petitioner and as such, bail ought not be granted.

7. I have heard the submissions made at the bar and I have perused the materials

available on record.

8. It appears that the present accused/petitioner was arrested merely based on the statement of co-accused person and there is no other adverse material collected during the investigation to connect the present accused/petitioner in the instant case. It further appears that the accused No. 2 Sh. Shahab Uddin in his statement recorded by the Investigating Officer stated that on 26.07.2022, he was instructed to go to New Market Sanitation point through phone call by the accused/petitioner and he was handed over contraband substance packed in black polythene and on 28.07.2022, he was instructed to deliver the said contraband substance at Thuampui by the accused/petitioner through phone call. It appears that the mobile phone of the accused persons was not seized and no call data record was also collected during the investigation.

9. Mr. S. Vanlalhriata, learned counsel for the petitioner has relied on the decision of the Apex Court in the case of ***State (NCB) Bengaluru Vs. Pallulabid Ahmad Arimutta & Another***, reported in ***2022 (1) SCR 422***.

Paragraph 10 of the aforesaid judgment is reproduced hereunder for ready reference:-

“10. It has been held in clear terms in Tofan Singh v. State of Tamil Nadu, that a confessional statement recorded Under Section 67 of the NDPS Act will remain inadmissible in the trial of an offence under the NDPS Act. In the teeth of the aforesaid decision, the arrests made by the Petitioner-NCB, on the basis of the confession/voluntary statements of the Respondents or the co-Accused Under Section 67 of the NDPS Act, cannot form the basis for overturning the impugned orders releasing them on bail. The CDR details of some of the Accused or the allegations of tampering of evidence on the part of one of the Respondents is an aspect that will be examined at the stage of trial. For the aforesaid reason, this Court is not inclined to

interfere in the orders dated 16th September, 2019, 14th January, 2020, 16th January, 2020, 19th December, 2019 and 20th January, 2020 passed in SLP (Crl.) No@ Diary No. 22702/2020, SLP (Crl.) No. 1454/2021, SLP (Crl.) No. 1465/2021, SLP (Crl.) No. 1773-74/2021 and SLP (Crl.) No. 2080/2021 respectively. The impugned orders are, accordingly, upheld and the Special Leave Petitions filed by the Petitioner-NCB seeking cancellation of bail granted to the respective Respondents, are dismissed as meritless."

10. It appears from the record that except the statement of the co-accused Sh. Shahab Uddin implicating the present accused/ petitioner, no other materials have been collected against the accused/petitioner.

11. In view of the ratio laid down in the case of ***State (NCB) Bengaluru Vs. Pallulabid Ahmad Arimutta & Another (Supra)***, a statement recorded under Section 67 of the ND&PS Act, 1985 will remain admissible in the trial of an offence under the ND&PS Act and therefore such statement, more particularly, on the basis of the voluntary statement of the co-accused cannot be a ground to have a reasonable belief that the accused is guilty of the offence. Further, there is no other material on record to connect the accused/ petitioner to the offence alleged. That apart, the Investigating Officer has neither seized the Phone calls nor collected call data record. Further, trial has already commenced and out of 7 witnesses 4 have also been examined.

12. For the reasons discussed hereinabove, this Court is of the view that the accused/petitioner has been able to make out the prima facie case that there is no possible ground to believe that the accused/petitioner is guilty of an offence under Section 22(c) of the ND&PS Act, 1985.

13. Now coming to the other aspect of the matter that there is no likelihood of the

accused/petitioner committing any further similar offence, there is nothing adverse available on record against the antecedent of the accused/petitioner and there is also no material available on record to indicate that the accused/ petitioner is likely to commit any offence while on bail.

14. Considering the totality of the facts of the case, I am inclined to grant bail to the accused/petitioner. Accordingly, the accused/petitioner namely, Smt. Lalnunsiami be released on bail on executing a bail bond of Rs. 50,000/- (Rupees Fifty thousand Only) with two suitable sureties of like amount to the satisfaction of the jurisdictional learned Special Judge, under the ND&PS Act, Aizawl.

15. The direction for bail is for the subject to the conditions that the accused/petitioner-

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.

The Bail Application stands disposed of accordingly.

JUDGE

Comparing Assistant