

GAHC030000682024



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

Case No. : Bail Appln./8/2024

Sh. Bokual Uddin and Anr.
S/o Moin Uddic
R/o Malsy, Karimganj.

VERSUS

The State of Mizoram
r/b the Public Prosecutor, Mizoram. 2:Sh. Sabir Ali
S/o Bais Ali
R/o Masly
Karimganj

Advocate for the Petitioner : A H Borbhuiya

Advocate for the Respondent :

BEFORE
HONOURABLE MRS. JUSTICE MARLI VANKUNG
ORDER

Date : 26.02.2024

Heard Mr. A.H. Borbhuiya, learned counsel for the applicants along with Mrs. Linda L. Fambawl, learned Additional Public Prosecutor for the State respondents.

2. This is an application filed under Section 439 Cr.P.C. r/w Section 37 of the ND&PS Act, 1985 for granting bail to the applicants, who are in custody in

connection with Excise & Narcotics Case No. Ex-N-243/2023 dated 28.08.2023 under Section 21(C) of ND&PS Act.

3. The learned counsel for the applicants submits that the instant applicants are the driver and handyman of the vehicle from where the contraband substances were recovered and they have been arrested in connection with the seizure of the contraband substances seized on 28.08.2023 by the Excise personnels. The contraband substances seized weight 2 kgs of Heroin, kept in 149 numbers of soap cases from the vehicle, one Bolero Pickup (Goods Carrier) bearing Registration No. AS11-AC-1929, which was driven by the applicant No. 1 along with his handyman i.e., applicant No. 2. Both the applicants have been detained in judicial custody till date.

4. The learned counsel submits that both the applicant had no knowledge regarding the seizure of the seized articles which were loaded under the instruction of the Bolero Pickup owner. The learned counsel submits that charge sheet have been submitted and the case is at its trial stage. He further submits that the applicants being the driver and handyman of the vehicle had no knowledge of the seized articles and do not have any involvement in the instant case, since they were acting only under the instruction of the vehicle owner and the accused No. 1, who had hired the vehicle. He further submits that the accused No. 1 has already claimed the ownership of the seized articles. The learned counsel also submits that both the applicants are young in age and being innocent of the charge made out against him, and further detention in judicial custody would be detrimental for them. In support of his submissions, he has cited the decision of the Apex Court in ***Mohd Muslim @ Hussain Vs.***

State (NCT of Delhi) in Special Leave Petition (Crl.) No. 915/2023.

5. Mrs. Linda L. Fambawl, learned Additional Public Prosecutor, on the other hand submits that from the contents of the charge sheet, it is seen that the seized articles were seized from a separate hidden compartment made in the vehicle and thus, it is unlikely that the applicants, who are the driver and the handyman were not aware of the seized articles, which is of a huge amount and were hidden in the secret compartment made in the vehicle. She further submits that it can be seen from the evidence that the applicants had transported the said seized articles into Mizoram for supply and sale of the same. She submits that the prosecution witnesses will be able to establish that both the applicants were caught in conscious possession of the seized articles/contraband substances.

6. I have heard the submissions made by both the parties and I have also perused the documents on record.

7. A perusal of the charge sheet shows that the seized articles were seized from special and hidden compartment made in the vehicle. Thus, *prima facie* at this stage it appears that the applicants who are the driver and handyman are aware of the hidden articles kept in the special compartment made inside the vehicle. It is also seen that in the cited case i.e., **Mohd Muslim @ Hussain Vs. State (NCT of Delhi) (Supra)** the facts are not similar with the instant case. In the cited case, the applicants had suffered incarceration for over 7 years and the criminal trial had hardly reached half way mark. Thus, the consideration of the release of the applicant on bail by the Apex Court in the cited case, is under different circumstances.

8. For the above reasons, the instant bail application stands dismissed. However, this Court finds it fit to direct the learned Trial Court to expedite the trial of the case in the interest of justice.

9. Accordingly, Bail Application No. 8/2024 stands dismissed and disposed of.

JUDGE

Comparing Assistant