

GAHC030000822024



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

Case No. : Bail Appln./12/2024

Sh. Challianmanga
S/o Zabiakthanga
R/o Zokhawthar, Champhai, Mizoram.

VERSUS

The State of Mizoram
r/b the Public Prosecutor, Aizawl, Mizoram.

Advocate for the Petitioner : Mr. Jonathan L Sailo

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

ORDER

BEFORE

HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA

23.02.2024

Heard Mr. Jonathan L. Sailo, learned counsel for the petitioner as well as Mrs. Mary L. Kiangte, learned Addl. P.P.

2. The petitioner herein has prayed for bail in a case pertaining to a charge under Section 21(b) of ND&PS Act.

3. The petitioner's case is that there are four accused persons in the present

case, i.e., CrI.Tr.Ex.No. 1211/2023 where Charge-sheet had been filed and trial has started. The name of the four accused persons are (1) Sh. Zairikhuma (2) Sh. Malsawmzuala (3) Sh. Challianmanga (the present petitioner) and (4) Sh. Vanlalhruaia.

4. The genesis of the case against the petitioner is that the accused Sh. Zairikhuma was arrested on 14.04.2023 for possession of 90 grams of heroin, while the accused Sh. Malsawmzuala was arrested on 14.04.2023 for possession of 14 grams of heroin. The petitioner herein, Sh. Challianmanga and co-accused Sh. Vanlalhruaia were arrested on 14.04.2023, on the basis of a statement allegedly made by the co-accused Sh. Zairikhuma, to the effect that the petitioner was the real owner of the 90 grams of heroin seized from Sh. Zairikhuma.

5. The petitioner's counsel submits that in view of the recovery of heroin from Sh. Zairikhuma and Sh. Malsawmzuala, a case under Section 21(b) ND&PS Act had been registered against all the four accused persons. He submits that the petitioner's Bail Appln. No. 1686/2023 was rejected. He further submits that the co-accused Sh. Malsawmzuala has been granted bail under Section 167 Cr.PC, vide Order dated 27.06.2023 passed in Bail Appln. No. 1102/2023. The co-accused Sh. Vanlalhruaia has been granted temporary bail for 2 months, vide Order dated 13.12.2023 passed in Bail Appln. No. 1687/2023 by the learned Special Court.

6. The petitioner's counsel submits that the heroin were not seized from the possession of the petitioner and as such, the petitioner cannot be charged with Section 21(b) ND&PS Act alone, though it had been reflected in the Charge-

sheet that the petitioner was charged under Section 21(b) alone, along with the other co-accused persons.

7. The petitioner's counsel further submits that the petitioner was made to sign a typed copy of a statement in the Police Station alleging that he was the owner of the seized 90 grams of heroin. He submits that the statement made before the Police Station is under Sections 25 & 26 of the Indian Evidence Act. As there is no material to show the involvement of the petitioner in the above case, besides the statement made by co-accused Sh. Zairikhuma, which is inadmissible in evidence, the petitioner should be released on bail.

8. Mrs. Mary L. Khiangte, learned Addl. P.P submits that the co-accused Sh. Zairikhuma, having clearly implicated the petitioner as the owner of the heroin, the petitioner should not be released on bail as he is the kingpin in the case.

9. I have heard the learned counsels for the parties.

10. The records from the Special Court have been called for and a perusal of the same shows that the petitioner's bail application had been heard on 09.10.2023 and disposed of by the Special Court on the same day. However, it is noticed that the copy of the Order dated 09.10.2023, which was to be given to the petitioner through his counsel, has not been furnished to him.

11. A perusal of the Charge-sheet shows that while all the co-accused have been charged under Section 21(b) of ND&PS Act, the petitioner and Sh. Vanlalhruaia have been charged with Section 23(b) of ND&PS Act also. It appears that the said 23(b) ND&PS Act had been inserted due to the statement

made by the co-accused Sh. Zairikhuma against the petitioner.

12. In the case of ***Surinder Kumar Khanna Vs. Intelligence Officer, Directorate of Revenue Intelligence***, reported in ***(2018) 8 SCC 271***, the Supreme Court has held that a confessional statement of a co-accused cannot by itself be taken as a substantive piece of evidence against another co-accused and can at best be used or utilised in order to lend assurance to the Court.

13. In the case of ***Tofan Singh Vs. State of Tamil Nadu***, reported in ***(2021) 4 SCC 1***, the Supreme Court held 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.

14. In the present case, neither has the petitioner made any confessional statement under Section 164 Cr.PC, nor can the typed statement signed by the petitioner in the Police Station be used as evidence against him. Further, the question of whether the statement of the co-accused can be used for convicting the petitioner would have to be determined in conjunction with the other evidence to be adduced during the trial.

15. On considering all the above facts, this Court is of the view that the petitioner should be released on bail. Accordingly, he is released on bail, on a bail bond of Rs. 1 Lakh with one surety of like amount, which should be deposited before the Court. Besides the above, there should be another surety for the same amount, who should be a permanent resident of Aizawl and the same should be to the satisfaction of the learned Trial Court. The petitioner should attend the Court regularly and shall not try to influence the witnesses.

He shall also not leave the jurisdiction of the Special Court without taking prior permission. Violation of any of the above provisions will lead to automatic cancellation of the bail given to him.

16. The bail application is accordingly disposed of.

17. Send back the LCR.

JUDGE

Comparing Assistant