

GAHC030001172024



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

Case No. : Bail Appln./18/2024

Sh. Lalbuatsaiha
S/o Roliana
R/o Thingkangphal, Churachanpur District, Manipur.

VERSUS

The State of Mizoram
r/b the Public Prosecutor

Advocate for the Petitioner : Ms Rose Mary

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

ORDER

B E F O R E

HON'BLE MR. JUSTICE NELSON SAILO

05.03.2024

Heard Mrs. Rosemary, learned counsel for the petitioner and Mrs. Linda L Fambawl, learned Addl. Public Prosecutor for the State. By filing this application under Section 439 Cr.P.C, the petitioner prays for his enlargement on bail.

[2.] The facts of the case is that the petitioner was arrested on 07.04.2023 for alleged recovery of 180 grams of heroin packed in 15 (fifteen) soap cases and kept in Maixell carton box, which was recovered from the vehicle driven by the

petitioner Bearing Registration No. MZ 01 C 4471. Another 24 grams of alleged heroin was again recovered from Thakthing Veng inside the house of the sister of the petitioner. Accordingly, Excise Case No. 98/2023 dated 07.04.2023 under Section 21(b) of the ND&PS Act, 1985 was registered and investigation conducted. Upon completion of the investigation, charge-sheet was filed on 03.06.2023. Charge was framed under Section 21(b) of the ND&PS Act against the petitioner on 12.07.2023 and to which, he pleaded not guilty and claimed for trial. The prosecution has cited as many as 6 (six) prosecution witnesses but according to the learned counsel for the petitioner, none of the prosecution witnesses have been examined so far. PW-1, who is the Seizing Officer, was summoned on six occasions but he failed to appear before the Court. She further submits that the petitioner is a first time offender and has been in judicial custody for the last 10 (ten) months and therefore, he should be released on bail. The learned counsel also submits that the petitioner is charged under Section 21(b) of the ND&PS Act and therefore, the vigors of Section 37 of the ND&PS Act will not apply. She thus submits that the petitioner be released on bail.

[3.] Mrs. Linda L Fambawl, learned Addl. Public Prosecutor, on the other hand, submits that 180 grams of heroin packed in Maixell carton box was recovered from Sumo vehicle driven by the petitioner and from the information received from him, another 24 grams of heroin was recovered from the house of his sister at Thakthing Veng. Therefore, it is clear that the petitioner is in conscious possession of the contraband substance which he intended to sell for profit. She submits that the punishment prescribed for contravention of Section 21(b) of the ND&PS Act is rigorous imprisonment for a term which may extend to 10 years and with fine which may extend to Rs. 1 lakhs. Considering the gravity of the offence and the fact that the petitioner knowingly transported the contraband substance for profit, bail should not be granted to him. The learned Addl. Public Prosecutor further

submits that according to the information received by her, PW-1 was first summoned on 08.08.2023 but for some reason, he could not appear. Now the next date fixed for PW-1 evidence is 13.03.2024.

[4.] I have heard the submissions made by the learned counsels for the rival parties and I have perused the materials available on record.

[5.] Allegation against the petitioner is that 180 grams of heroin was recovered from the vehicle driven by him and another 24 grams of heroin was recovered from the house of his sister in Thakthing Veng. The counsel for the petitioner has submitted that since charge-sheet has already been filed and the petitioner already being in judicial custody for more than 10 years, he should be released on bail. However, from the materials available on record, there are materials to prima facie show that the petitioner is guilty of having 204 grams of heroin in his conscious possession. Considering the gravity of the offence and the punishment prescribed, charge-sheet having already been filed cannot be the ground for enlarging the petitioner on bail. Likewise, the petitioner being a first time offender cannot by itself be the grounds for releasing him on bail. Therefore, upon due consideration, this Court is not inclined to grant bail to the petitioner.

[6.] It is noticed that although the charge-sheet was submitted on 03.06.2023 and charge framed against the petitioner on 12.07.2023, none of the six prosecution witnesses cited have been examined till date. PW-1 was first summoned on 08.08.2023 but he has not appeared till now to give his evidence. It is submitted at the bar that the next date for his appearance is 13.03.2024. Considering the manner in which the trial is progressing, liberty is granted to the petitioner to file appropriate application before the learned Trial Court for early completion of the trial proceedings. If such an application is filed by the petitioner, the Trial Court shall consider the same on its own merit and pass an appropriate

order.

[7.] With the above observation, the bail application stands disposed of.

JUDGE

Comparing Assistant