

GAHC030001212024



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

Case No. : Bail Appln./20/2024

Sh. Lawmzuala r/b his daughter Smt. Zothantluangi
S/o Lalzama
R/o Chawnpui, Aizawl, Mizoram.

VERSUS

The State of Mizoram and Anr.
r/b the Secretary to the Govt. of Mizoram,
Home Department, Aizawl, Mizoram

2:The Officer-in-Charge
Sangau Police Station
Lawngtlai District
Mizoram

Advocate for the Petitioner : Mr. Joseph Lalchhanhima Renthlei

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

B E F O R E
HON'BLE MRS. JUSTICE MARLI VANKUNG
O R D E R

29.02.2024

Heard Mr. Joseph Lalchhanhima Renthlei, learned counsel for the applicant.

2. This is a bail application under Section 439 Cr.P.C. for enlargement of the applicant on bail in connection with Sangau PS Case No.3/2024 dated 05.02.2024 under Section 4 of the Explosive Substance Act, 1908 read with Section 34 of the IPC.

3. The learned counsel for the petitioner submits that the applicant/petitioner is innocent of the said charge and that the explosive said to be seized from the other co-accused Nos. 1 & 2 are the explosive which was bought from the petitioner, however the said explosive are for the Stone Quarry belonging to the instant applicant/petitioner and the explosives were procured by the instant petitioner under a valid license.

4. The learned counsel further submits that the applicant/petitioner could not approach the Sessions Court at Lunglei since he is presently at Lawngtlai Jail and do not have any contact for him to approach for the Sessions Court at Lunglei on their behalf. He further submits that there will be no danger of the applicant to abscond during the trial of the case, if granted bail, since he is a permanent resident at Aizawl and a presently working as Junior Technical Assistant in the Directorate of Geology & Mining, Commer & Industries Department.

5. The learned counsel further submits that the charge u/s 4 of the Explosive

Substances Act is triable by the Sessions Court, however since they have difficulty in approaching the Sessions Court, Lunglei, he prayed that he may be permitted to file the bail application before the Judicial Magistrate First Class at Lawngtlai. In support of his submission, the learned counsel has relied on the Judgment of the Apex Court in ***Prahlad Singh Bhati -Vs- NCT Delhi & Anr.*** reported in ***(2001) 4 SCC 280 and the decision of Full Court of the Gauhati High Court in State of Assam & Anr. In re. reported in (2007) 2 GLT 182.***

6. Mrs. Linda L. Fambawl, learned Addl. Public Prosecutor has not objected to the prayer made by the learned counsel for the applicant.

7. Considering the limited prayer made by the learned counsel for the applicant and considering the decision of Full Court of the Gauhati High Court in ***State of Assam & Anr. In re. (Supra)*** wherein it was held that :

“a Magistrate has the jurisdiction to consider the prayer for bail of a person accused of commission of a non-bailable offence punishable with death or life imprisonment. However, in order to release an accused on bail, the Magistrate is required to record specific finding that there is no reasonable ground for believing that the accused is guilty of an offence punishable with death or imprisonment for life. In view of the embargo provided under sub-clause (i) and sub-clause (ii), the Magistrate entertaining a bail application under section 437 shall have a very limited scope to consider bail.”

8. This court finds it fit to dispose of the instant Bail application with an observation that the court of the Judicial Magistrate First Class, Lawngtlai is not barred from entertaining the bail application filed before the learned court if the learned JMFC is of the considered opinion that there is no reasonable ground for believing that the accused/applicant is guilty of an offence punishable under

Section 4 of Explosive Substance Act, 1908.

9. In view of the above, the instant applicant is allowed to approach the court of the learned JMFC for her release on bail.

10. Accordingly, Bail Application No. 20/2024 stands disposed of.

JUDGE

Comparing Assistant