

GAHC030001472024



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

Case No. : Bail Appln./23/2024

Sh. JH Lalngaihawma
S/o JH Zarzoliana
R/o Maubawk, Aizawl, Mizoram.

VERSUS

The State of Mizoram and Anr.
r/b the Secretary to the Govt. of Mizoram, Excise and Narcotics Department, Aizawl,
Mizoram. 2: The Officer-in-Charge
Anti-Narcotic Squa

Advocate for the Petitioner : Mr. K. Khamthianmanga

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

ORDER

BEFORE
HONOURABLE MRS. JUSTICE MARLI VANKUNG

27.03.2024

Heard Mr. K. Khamthianmanga, learned counsel for the applicant alongwith Mrs. Mary L. Khiangte, learned Addl. P.P for the State respondents.

2. This is a bail application filed under Section 439 Cr.PC for release of the applicant on bail. The applicant alongwith the co-accused Joseph Lalnunthara and

Roluahpuia were arrested by the Excise Personnel on 12.06.2023 on the allegation of committing an offence under Section 20 (b)(ii)(B) of the ND&PS Act, 1985. The applicant was alleged to have possessed 10.596 kgs of ganja kept in the blue nylon bag which was seized from the alleged possession of the applicant.

3. The learned counsel for the applicant submits that the applicant is entitled to be released on bail, since there is a violation of Sections 41 & 42 of the ND&PS Act. He submits that the Seizing Officer in his statement recorded under Section 161 Cr.PC has stated that on 12.06.2023 at around 2:00 PM, he received a report from a person who used to sell ganja. On the other hand, in the information report he had mentioned that he received the information on 12.06.2023 at 1:00 PM. He therefore submits that there is clear discrepancy in the timing.

4. The learned counsel also submits that the provisions of Section 52-A of the ND&PS Act has not been followed and that the photographs taken before the JMFC cannot be in accordance with Section 52-A of the ND&PS Act.

5. The learned counsel further submits that the Seizing Officer, being an ASI is not authorized to make the seizure since there is no authorization letter. He also submits that the applicant is not fit to be detained in jail since he was referred to a Psychiatrist and as per the medical report made by Dr. C. Lalhrekima, Psychiatrist, it is seen that he is required to take medication and has sleeping disorder. He further submits that he is not able to take the proper treatment or be examined by the Medical Officer in-charge of Central Jail due to the large number of inmates who needs to be medically examined. He also submits that the applicant was previously allowed to be released on interim bail on medical grounds from 18.12.2023 to 19.02.2024 and he prays that he may now be allowed to be released on regular bail due to his medical condition.

6. The learned counsel in support of his submission has cited the decision of the Apex Court in *Mohammed Khalid and Another Vs. The State of Telangana*, reported in *Criminal Appeal No. 1610/2023* and a Co-ordinate Bench of this Court in *Krosmawii Vs. State of Mizoram*, reported in *2022 SCC OnLine Gau 2214*.

7. Mrs. Mary L. Khiangte, learned Addl. P.P on the other hand has strongly objected the release of the applicant on bail submitting that a prima facie reading of the Charge-sheet shows that the provisions of Sections 41 & 42 has been complied with and since the case is at a trial stage, the Seizing Officer is yet to be examined. She further submits that with regards to the non-compliance of Section 52-A, in the photographs of the inventory taken before the JMFC, the photographs are Photostat copies and therefore not clear and the JMFC is yet to be examined in the Court. At this stage, it cannot be presumed that Section 52-A ND&PS Act has not been followed and further, non-compliance of Section 52-A will not vitiate the case.

8. The learned Addl. P.P also submits that the medical report submitted does not indicate that the applicant is not able to get the required medical treatment while he is in custody.

9. Having heard the submissions made by the learned counsels for both the parties and considering the fact that the case is at its trial stage, wherein 2 (two) Prosecution Witnesses have been examined out of 6 (Six) Prosecution Witnesses, this Court finds that whether the provisions of Sections 41 & 42 of the ND&PS Act has been violated or not will have to be considered after the examination of the Seizing Officer before the Court, it is seen that the Seizing Officer, who has been a PW-3 is yet to be examined. This Court therefore finds it pre-mature to decide whether the provisions of Sections 41 & 42 has been violated or not, at this stage.

This Court also finds that whether there is a violation of Section 52-A of the ND&PS Act will have to be looked into after the examination of the JMFC. With regards to the medical condition of the applicant, this Court finds that at this stage, there is no indication that the applicant, because of his medical/mental condition is not fit to be kept in judicial custody.

10. For the above reasons, this Court at this stage, finds no ground to grant bail to the applicant. However, this shall not bar the applicant from filing a fresh bail application if it is shown that due to his medical condition, he is not fit to be kept in judicial custody.

11. Accordingly, Bail Appln. No. 23/2024 stands dismissed at this stage.

JUDGE

Comparing Assistant