

GAHC030001522024



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

Case No. : Bail Appln./24/2024

Sh. Lalpianthanga and Anr.
S/o Patea
R/o Khualen, Khawzawl District, Mizoram. 2: Vanlalngaihsak

VERSUS

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

Advocate for the Petitioner : Mr. Lalpianfela Chawngthu

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

JUDGMENT / ORDER

Date : 18-03-2024

BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA

Heard Mr. Lalpianfela Chawngthu, learned counsel for the petitioners. Also heard Ms. Mary L Khiangte learned Additional Public Prosecutor for the State of Mizoram.

2. This an application under Section 439 of Cr.P.C praying for grant of bail to the accused/petitioners, namely, **Sh. Lalpianthanga and Sh.**

Vanlalngaihsaka, who have been arrested on 03.11.2023 in connection with Excise C/No. EX-N-293/2023 under Sections 21(b) of ND&PS Act, 1985.

3. It is submitted by Mr. Lalpianfela Chawngthu, learned counsel for the petitioners that the accused/petitioners are innocent and they are no way connected in the alleged offence. However, they were arrested in connection with this case on 03.11.2023 and since then they are in custody. It is alleged that 36 (thirty-six) grams of heroin has been recovered from their possession which were kept in 3(three) soap cases wrapped in a black polythene along with cash amount of Rs. 43,500/- (Forty-three thousand five hundred) only which is alleged to be the sale proceeds. After the investigation, the case has already charge-sheeted on 29.12.2023 and presently the case is at this stage of consideration of charge. They previously submitted 2(two) bail applications before the learned Special Judge which were rejected vide order dated 25.01.2024 & 09.02.2024.

4. He further submits that as per the investigation, 7(seven) grams of samples along with 3(three) grams of duplicate are drawn from the seized suspected heroine which were alleged to have kept in 3(three) soap cases but on weigh by the FSL it comes to 5.32 gm, 6.626 gm and 5.49 gm respectively which is a clear discrepancy in regards to the weight of the samples drawn before sending the same to FSL. More so, he submitted that the samples were sent only on 06.11.2023 and thus, the samples were kept for 2 (two) days with the Investigating Officer but there is no mention in the charge-sheet as to where those samples were kept before it was sent to FSL.

5. In this context, he also relies on a decision of the Co-ordinate Bench passed in Crl.A.38/2018, wherein in the paragraph No. 19 of the said judgment, the Court has expressed the view that the chance of tampering cannot be ruled out when there is lack of evidence about the safe custody of the sample packets. Further, it is also held that the discrepancies of the weight of the samples will make a lot of difference and also cannot be over-looked.

6. The learned counsel for the petitioner further submitted that the present accused/petitioners have no criminal antecedents and they being the permanent resident of the Mizoram have no chance of absconding if the accused/petitioners are released on bail. The case is at the stage of consideration of charge and hence, the trial is not yet began and therefore, some more time may be taken for completion of the trial and hence, considering the period of detention already undergone by the accused/petitioners they should be enlarged on bail.

7. He further submitted that CMA No. 4 of 2024 was also submitted for releasing of the accused/petitioners on bail under Section 439 Cr.P.C read with Section 167(2)(a) of Cr.P.C, but the same was rejected only with the reason that application was registered as Criminal Miscellaneous Application which is arbitrary and erroneous in the eye of law. More so, the criminal petition was filed for bail on 12.01.2024 in the morning hours at around 10:00 AM and after filing of the petition the charge-sheet was laid by the prosecution. Thus, the accused/petitioners infeasible right to default bail also did not consider by the learned Court below and rejected the Criminal Miscellaneous Application illegally and arbitrarily.

8. In this context, the learned Additional Public Prosecutor Ms. Mary L Khiangte has submitted that the judgment which is relied by the learned counsel for the petitioner is passed by the Co-ordinate Bench while dealing with the appeal but, the present petition is only for bail and hence, the discrepancies of weight etc. may be considered at the time of trial or final hearing of the case. Further, she submitted that in the State of Mizoram, it is the common practice that the weight of the contraband is taken in an open space in presence of the Magistrate concerned and when it was weighed in the FSL with a sophisticated instrument there is some differences of weight due to default of the machinery and also may be for the reason that the weight is used to take in an open space before sending it to FSL. But that cannot be sole ground for consideration of the bail and those points may be raised at the time of final hearing of this case.

9. She further submits that the contraband was recovered from the conscious possession of the accused/petitioners and they are in custody since 5(five) months only and at the same time the trial has already been commenced and the case is at the stage of consideration of charge. She also raised the point that the petition for default bail was submitted only on 12.01.2024, but, from the record it reveals that the charge-sheet was submitted by the Investigating Officer on 29.12.2023. However, she admitted that the accused/petitioners is from Mizoram and there may not be chance of absconding but as the contraband was recovered from the conscious possession of the accused/petitioners and trial has already been commenced, she raised objection in allowing the accused/petitioners to go on bail at this stage.

10. After hearing the submissions made by the learned counsel for both sides,

I have also perused the case record and the annexure filed along with the petition.

11. It is fact that the case is of intermediate quantity and charge-sheet is also submitted under Section 21(b) of NDPS Act. Further, the issue raised by the learned counsel for the petitioners in regards to weight of the samples and in regards to the purity of the samples etc, may be the issues to be decided at the time of final hearing or trial of the case. But, it cannot be denied that the accused/petitioners are behind the bars since more than 5(five) months and till date the charge is also not framed against the accused/petitioner as the matter is fixed for consideration of charge and hence, some more time may be required for completion of the trial. As the case is under the intermediate quantity, the rigor of 37 NDPS Act will not follow in the present case but the alleged contraband was recovered from the conscious possession of the accused/petitioners. However, the possibility of absconding of the accused/petitioners is very less as per the submission of the learned counsel for both sides, as the accused/petitioners are the permanent resident of the State of Mizoram.

13. So, considering all the aspects of the case and also considering the length of detention already undergone by the accused/petitioners, this Court is of the view that further custodial detention of the accused/petitioners seems to be not justified here in this case.

14. Accordingly, it is provided that the accused/petitioners, namely, **Sh. Lalpianthanga and Sh. Vanlalngaihsaka**, shall be released on bail of Rs. 50,000/- (Rupees Fifty thousand) each only with two sureties of like amount to

the satisfaction of the **learned Special Court (NDPS Act), Aizawl** subject to the following conditions:-

- i) That the accused/petitioners shall continue to appear before the learned trial Court on all dates to be fixed from time to time till the case is disposed of;
- ii) That the accused/petitioners shall not directly or indirectly make any inducement, threat or promise to the remaining prosecution witnesses, who are acquainted with the facts of the case so as to dissuade him/her from disclosing such facts to the Court; and
- iii) That the accused/petitioners shall refrain from committing any offences similar to the one of which he is accused of commission.

In terms of above, this bail application stands allowed and disposed of.

JUDGE

Comparing Assistant