

GAHC030001542024



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

Case No. : Bail Appln./25/2024

Sh. Holkhomang
S/o Holkhozang
R/o Bawngkawn, Shalom Veng, Aizawl, Mizoram.

VERSUS

The State of Mizoram and Anr.
r/b the Secretary to the Govt. of Mizoram, Home Department. 2:SI Rorelkim
(Complainant)
Excise and Narcotics
Anti-Narcotics Squad
Aizawl
Mizoram

Advocate for the Petitioner : Mr Laltanpuia

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

**BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA
ORDER**

15.03.2024

Heard Mr. Laltanpuia, learned counsel for the petitioner. Also heard Ms. Marry L. Khiangte, learned Government Advocate for the State respondents.

2. This is an application filed under Section 439 of the Code of Criminal Procedure, 1973, praying for grant of bail to the accused/petitioner, who has been languishing in jail hazot since 22.03.2023 in connection with Excise & Narcotics Case No. EX-N-73/2023 [arising out of Criminal Trial (EX) No, 873/2023] under Section 21 (b) of NDPS Act.

3. It is submitted by Mr. Laltanpuia, learned counsel for the petitioner that the accused/petitioner is innocent and no way involved in the alleged offence. But, he was arrested in connection with this case on 22.03.2023 and since, then he is in the custody. He also submits that the case has already been charge-sheeted under Section 21(b) of NDPS Act and the 2 (two) witnesses has already been examined, however, there are several numbers of other witnesses who are yet to be examine by the prosecution and which will take some more time in completion of the trial. He further submits that as the case has already been charge-sheeted under the intermediate quantity of the NDPS Act and hence, the rigor of section 37 will not attract in this case.

4. In addition to his submission, the learned counsel for the petitioner relies on the decision passed by the Hon'ble Apex Court reported in **2023 SCC Online SC 1418 [Puranmal Jat vs. State of Rajasthan]**, wherein, it has been held that the restriction on the grant of bail under Section 37 of the NDPS Act is not applicable in case where the quantity of contraband recovered is less than commercial quantity.

5. Further, he submits that there is no proper compliance of Section 42 of NDPS Act, which is a mandatory provision and from the charge-sheet and the materials available in the record, it is very much evident that there was no recording of information prior to the search made against the accused/applicant in his residence. Also, due to non compliance of Section 42 of NDPS Act, the present accused/petitioner is entitled for bail. In support of his submission, he also relies on another decision passed by the Hon'ble Apex Court reported in (**2004) 12 SCC 266 [Sarija Banu Alias Janarthani Alias Janani & Anr. vs. State through Inspector Director of Police]** and mainly emphasized on paragraph No.7 of the said judgment which read as under;

"7. It is pertinent to note that in the bail application the appellants, it was alleged, that there was serious violation of [Section 42](#) of the NDPS Act. In the impugned order nothing is stated about the alleged violation of [Section 42](#), and it is observed that it was not necessary to consider such violation at this stage. The compliance of [Section 42](#) is mandatory and that is a relevant fact which should have engaged attention of the Court while considering the bail application."

6. Accordingly, the learned counsel for the petitioner submits that considering his length of detention, the accused/petitioner may be enlarged on bail and if the same is granted, there is no chance of absconding, as the petitioner is a permanent resident of this locality and he will appear regularly before the Trial Court and contest the case as when the date is fixed.

7. In this context, Ms. Marry L. Khiangte, learned Government Advocate has submitted that, the accused/petitioner was detained after receiving the information and after arrival of the Excise Officer only the search and seizure was carried out and hence, the Section 42 of NDPS Act is also not applicable here in this case. More so, the case has already been charge-sheeted and two witnesses have already been

examined and can be expected that within a reasonable time, the trial will be completed. Accordingly, she raised objection in the prayer made by the learned counsel for the petitioner.

8. Considering the submissions made by the learned counsels for both sides, I have perused the case record along with the documents annexed in the petition. It is seen that, the accused/petitioner was arrested on 22.03.2023 and since then he is in custody. The case has been charge-sheeted under Section 21 (b) of NDPS Act and it is not a case of commercial quantity and hence, rigor of Section 37 will not attract. Thus, considering the other aspect of the case vis-a-vis non compliance of Section 42 of NPDS Act and the view of the Hon'ble Apex Court relied by the accused/petitioner as well as considering the length of detention already undergone by the accused/petitioner, this Court is of the view that further custodial detention of the accused/petitioner seems to be not justified here in this case.

9. Accordingly, it is provided that on furnishing a bond of Rs. 50,000/- (Rupees Fifty thousand) only with one surety of like amount to the satisfaction of the learned Special Court, NDPS, Aizawl, the accused/petitioner, namely **Shri Holkhomang**, be enlarged on bail, subject to the following conditions:

- (i) that the petitioner shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer; and
- (ii) that the petitioner shall not leave the jurisdiction of the learned Special Court, NDPS, Aizawl, without prior permission.

10. In terms of above, this bail application stands disposed of.

JUDGE

Comparing Assistant