

GAHC030001562024



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

Case No. : Bail Appln./26/2024

Sh. Lalneihthanga
S/o Khuaduna
R/o Zokhawthtar, Champhai District, Mizoram.

VERSUS

The State of Mizoram
r/b the PP/APP, Mizoram.

Advocate for the Petitioner : Ms. Lalngaihsaki Fanai

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

BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA

ORDER

Date : 13.03.2024

Heard Ms. Lalngaihsaki Fanai, learned counsel for the petitioner. Also heard L. L. Fambawl, learned Additional Public Prosecutor for the State of Mizoram.

2. This an application under Section 37 of the ND&PS read with 439 of the Code of Criminal Procedure praying for grant of bail to the accused/petitioner, namely, Sh. Lalneihthanga, who has been arrested on 14.05.2023 in connection

with Criminal Trial No. 1288/2023 under Sections 21(c)/8(c) of ND&PS Act, 1985.

3. It is submitted by Ms. Lalngaihsaki Fanai, learned counsel for the petitioner that the accused/petitioner is innocent and he has been falsely implicated in this case and the present accused/petitioner has been incarcerated for almost 10(ten) months and trial had already been commenced and 3(three) prosecution witnesses have been examined till date. She further submits that as per prosecution story on 14.05.2023 at about 9:00 AM, the accused/petitioner was arrested with the allegation that 1126 grams of suspected heroin kept in 88 soap cases were taken out from two empty gas cylinders from the possession of the present accused/petitioner in his Maxi Cab bearing registration No. MZ07-2891 driven by the present accused/petitioner.

4. The present accused/petitioner had no knowledge with regards to transport of the contraband item and he being a Maxi cab (sumo) driver was only plying the car between Zokhawthar and Aizawl. On the day of incident one Kapenga and his brother came to sumo counter carrying 2(two) empty gas cylinders which they intend to send to Aizawl through the petitioner's cab. The transportation charges were collected by the receptionist and those 2(two) gas cylinders was loaded in his cab. The petitioner had no knowledge in regards to contraband substance hidden inside the gas cylinder and he being the driver of the Maxi Cab was only carrying those cylinders on good faith. But the empty gas cylinders were found in his possession and he was arrested in connection with this case and without considering the facts of the case he was arrested by police and since 14.05.2023 he is in custody. The case has already been charge-

sheeted and 3(three) witnesses are already examined by the prosecution. And considering all his facts of the case and considering the length of his detention, he may be enlarged on bail.

5. To substantiate the plea the petitioner also submitted the acknowledgement receipt from the Secretary, Aizawl to Zokhawthar Maxi Cab owner and also submitted the passenger's list of the day of the incident. Further she submitted that the accused/petitioner is the sole bread earner of the family and his 3(three) minor children and other family members are dependent on him and hence, in his absence the entire family is suffering from great financial crises. The accused/petitioner is a permanent resident of his addressed locality and there is no chance of absconding if the accused is enlarged on bail.

6. The learned counsel for the petitioner further relied on 2(two) decision of the Co-ordinate Bench of this Court passed in B.A No. 1846/2023 & in B.A. No. 18/2023 dated 19.06.2023 and 06.06.2023 respectively, wherein, the Co-ordinate Bench of this Court granted bail in the case of commercial quantity.

7. In this context, Ms. L. L. Fambawl, learned Additional Public Prosecutor has submitted that huge quantity of heroine was recovered from the possession of the present accused/petitioner which was concealed inside the empty gas cylinders in numbers of soap cases. The case has already been charge-sheeted and is at the stage of trial. Out of 6(six) witnesses, 3(three) witnesses are already examined and hence, within a short period there is a probability of completion of trial by the learned Court below. She further submits that this is the case of commercial quantity and hence, the probability of absconding of the accused/petitioner at this stage also cannot be denied if he is released on bail.

Apart from that she submitted that the rigor of Section 37 NDPS Act will also follow in the case of commercial quantity. Further, there is no reason to believe that the accused is not guilty of the offence alleged against him or there is no probability of doing similar kind of offences in future or while he is on bail. Accordingly, the learned Additional Public Prosecutor raised objection in allowing the accused to go on bail.

8. 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.

9. It is the case of the prosecution that 1126 grams of suspected heroine was seized and recovered from the possession of the present accused/petitioner which were concealed in 2(two) empty gas cylinders in 88 numbers of soap cases. And after receipt of the FSL report and on completion of the investigation, the case was accordingly charge-sheeted finding a prima facie case against the accused/petitioner.

10. It is also a fact that recovery was made from the possession of the accused/petitioner though he denied that it was not within his knowledge about the contraband which were concealed in 2(two) empty gas cylinders. As the case is under the commercial quantity the rigor of Section 37 NDPS Act will follow, which is read as under:

"37. Offences to be cognizable and on-bailable. (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974)

(a) every offence punishable under this Act shall be cognizable;

(b) No person accused of an offence punishable for [offences under Section 19 or Section 24 or Section 27A and also for offences involving commercial quantity] shall be released on bail or on his own bond unless

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail. (2) The limitations on granting of bail specified in clause (b) of sub-section (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force, on granting of bail."

11. Thus, the bail in cases under NDPS Act, specially the commercial quantity, has to be seen as to whether there is any material to believe that the accused is not guilty of such offence and he is not likely to commit the offence while on bail. But it is seen that after collecting the materials by the I.O, a prima facie case has been established against the accused/petitioner and accordingly charge-sheet has also filed against him. More so, it is seen that the trial is also proceeded expeditiously and 3(three) numbers of witnesses are examined out of 6(six) prosecution witnesses and hence, the probability of completion of the trial within a short period can also be expected. More so, the probability of absconding of the accused person also cannot be denied at this stage, if the accused is released on bail.

12. The judgment of Co-ordinate Benches which are relied by the learned

counsel for the petitioner is not applicable in the present case and in B.A No. 1846/2023, the accused was released on bail prior to filing of the charge-sheet considering the materials available in the case diary and in B.A No. 18/2023 also similar kind of order has been passed considering the materials available in the case diary with an opinion that the accused may be not linked with the alleged offence.

13. But herein the instant case, It is seen that the prima facie case is established against the accused/petitioner on the basis of which the case is already been charge-sheeted and hence, only considering the period of incarceration the present bail application of the present accused/petitioner cannot be considered, as there is no reason to believe that the accused has not committed the offence alleged against him and he is not likely to commit the offence while on bail as required under Section 37 of NDPS Act.

14. In the result, I do not find it justified to allow the accused/petitioner on bail at this stage and accordingly, the present bail application stands rejected.

JUDGE

Comparing Assistant