

GAHC030001582024



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

Case No. : Bail Appln./27/2024

Sh. Jayanta Das
S/o Sankar Das,
R/o Sephahijala, Agartala, Tripura.

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

ORDER

Date : 14-03-2024

BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA

Heard Mr. Lalpianfela Chawngthu, learned counsel for the applicant. Also heard Ms. Linda, learned Additional Public Prosecutor for the State of Mizoram.

2. This an application under Section 439 of Cr.P.C read with Section 37 of ND&PS Act, praying for grant of bail to the accused/petitioner, namely, Jayanta Das, who has been arrested on 28.07.2022 in connection with Criminal Trial No. 1722/2022 under Sections 21(c) read with Section 29 of ND&PS Act, 1985.

3. It is submitted by Mr. Lalpianfela Chawngthu, learned counsel for the petitioner that on 28.07.2022 at Dapchhuah near Tut bridge, the Sub-Inspector, Excise & Narcotics Department, Mamit District has seized 2.085 Kgs of suspected heroine packed in 156 numbers of polythenes of different colour. Apart from that one Tata Harrier vehicle B.R. No. TR 01 BQ 0507 which was suspected for transporting and storing of the seized contraband. Accordingly, 5(five) persons, namely, Prasenjit Das, Biswajit Debnath, Jayanta Das, Haijal Ahmed and Abdul Muktdar were apprehended by the investigation officer, however, the accused No. 2, 4 & 5, namely, Biswajit Debnath, Haijal Ahmed and Abdul Muktdar was discharged and other 2(two) accused persons including the accused/petitioner, namely, Jayanta Das were forwarded to judicial custody with effect from 01.08.2022. He submitted that the accused/petitioner is innocent and he is no way involved in the alleged offence and he is in custody since 01.08.2022. His earlier bail applications were rejected by the learned Special judge and the case is already been charge-sheeted vide Charge-Sheeted No. 218/2022 on 21/10/2022 before the Special Court of NDPS Act, Aizawl.

4. He further submits that from the report of the FSL and seizure list the sample from each packages or pieces recovered were not sent for chemical examination and only 16(sixteen) numbers of samples packed and seized in paper envelope were sent for analyses. Out of which 8(eight) were found to be heroine with purity about 78% and 8 (eight) packages were found to be heroine with purity of 80% at the time of examination. Thus, from the report it cannot be held that or inferred that the substances in the other pieces or samples also contained heroine and thus, it is not safe to hold that 2.085 Kgs of heroine was recovered from the possession of the accused/petitioner and thus, without any

further report from the FSL in regards to other samples, it cannot be held that the commercial quantity of heroine was found in possession of the present accused/petitioner along with co-accused person.

5. To substantiate the plea the learned counsel for the petitioner relies on the decision of the Hon'ble Apex Court reported vide **(1993) AIR (SC) 1456 [Gunter Edwin Kircher vs. State of Goa, Secretariat Panji, Gao]**. In this context, he also relies on the 2(two) decisions of Delhi High Court passed in Criminal Appeal No. 909 of 2005 and Bail Application No. 113 of 2022, wherein, also the Hon'ble Delhi High Court had considered that the prejudice may cause to the accused/petitioner for faulty sampling process and accordingly, the Delhi High Court also considered that the rigors of Section 37 of the NDPS Act would not apply in the facts and circumstances of the present case.

6. He further submitted that from the materials available in the record, it is seen that the present accused/petitioner was the driver of Tata Harrier vehicle which was seized in connection with this case along with the alleged recovery of commercial quantity of heroine. As a driver his only duty is to carry passengers along with the goods loaded by the passengers. The passenger or the co-accused Shri Prasenjit Das misused the said vehicle for carrying the contraband which was just driven by him and thus, the rigours of 37 NDPS Act are not attracted against the present accused/petitioner in the peculiar facts and circumstances of the case.

7. In this context, he also relies on 2(two) decision of the Co-ordinate Bench of this case passed in B.A No. 18/2023 and B.A No. 965 of 2022, wherein, also the bail was granted considering the fact that the applicant was a driver of the

seized vehicle only and hence, no connection with the contraband loaded in the vehicle. Accordingly he submitted that considering all the facts of the case as well as considering the period of incarceration, the accused/applicant should be enlarged on bail. The accused/petitioner is a permanent resident of his addressed locality and there is no chance of absconding if the accused is released on bail rather he will appear before the Court on each and every date fixed by the learned Court below.

8. Ms. Linda, learned Additional Public Prosecutor submitted in this regard that the case has already been charge-sheeted and 5(five) witnesses are also been examined out of 10(ten) numbers of witnesses and next date of hearing is also fixed within this month and thus, there is every possibility of conclusion of the trial within a very short period. She further submitted that from the statement made in the FIR itself, it is seen that the accused/petitioner was also involved in carrying those contraband and he used to carry the contraband in his vehicle for consideration of money. So it is not a case that he is not aware of the fact of loading the contraband in his vehicle but he is very much involved in the alleged offence.

9. She further submitted that it reveals from the record also that out of 156 numbers of polythene package, seized in connection with this case, the investigating officer prepared 16 bunches with 10(ten) numbers of packages and took 5 grams from each of the branch and accordingly, 16 (sixteen) numbers of samples were prepared which were sent for chemical analysis. More so, from the report of the FSL, it is seen that the purity of the sample is also 78% to 80%. She further submitted that there is every possibility of absconding

of the accused/petitioner, if he is enlarged on bail at this stage which will affect the disposal of the case as well as chance of tampering with the other evidences also cannot be denied.

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 huge quantity of heroine was seized in connection with this case, which were brought in the vehicle of the present accused/petitioner. Though initially 5(five) numbers of persons were arrested who are the passengers of the vehicle but during the investigation it has come into light that 3(three) numbers of passengers are innocent and not at all involved in the alleged offence. However, finding a prima facie case against the present accused/petitioner along with the co-accused, the charge-sheet is filed.

12. The submission made in regards to sending all 16 (sixteen) numbers of sample package for examination, it is seen that entire quantity of the suspected heroine cannot be send for chemical analysis. However, the process by which the sampling packages were prepared, I find that sufficient quantity of samples were been sent for chemical examination and from the submission made by the learned Additional Public Prosecutor as well as from the record, it is also seen that 16 (sixteen) numbers of samples were made by taking samples from 16 (sixteen) bunches of samples with 10 (ten) numbers of packets in each branches and thus, I find there is sufficient compliance of sending instruction 1/88 which has been issued under this Act. The judgment of Hon'ble Supreme Court relied by the learned for the petitioner is not directly applicable in this

case as the purity was found to be 78% to 80% in each sample.

13. Further, it is seen that the accused/petitioner was not merely a driver of the seized vehicle but he was also aware about the loading of the contraband and in several occasion also he committed similar kind of offence and at the same time as discussed above, there is no fault in sampling process to allow the accused/petitioner to go on bail at this stage.

14. Further the case is of commercial quantity and hence, rigors of Section 37 of NDPS Act will be applicable but there is no material to believe that the accused is not involved in the offence alleged against him nor there is any material to believe that the accused will not commit similar kind of offence while on bail as required under Section 37 of NDPS Act.

15. Considering the submission made by the learned counsel for both sides and also considering the materials available in the case record as well as the nature and gravity of offence, I am of the view that this is not a fit case where the privilege of bail can be granted to the accused/applicant at this stage. 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