

GAHC030002022024



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

Case No. : Bail Appln./40/2024

Smt. Ngunneikili
D/o Zatihbaia
R/o Tahan, Myanmar.

VERSUS

The State of Mizoram and Anr.
r/b the Secretary/Commissioner, Excise and Narcotics Department, Govt. of
Mizoram.

2:The Officer-in-Charge
Anit-Narcotics Squa

Advocate for the Petitioner : Mr. J H Ramneihmawia

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

ORDER

B E F O R E

HON'BLE MR. JUSTICE NELSON SAILO

04.04.2024

Heard Mr. J.H. Ramneihmawia, learned counsel for the applicant, who submits that by filing this application under Section 439 Cr.PC, the petitioner seeks grant of bail pending final disposal of the connected trial.

[2.] The learned counsel submits that the petitioner was arrested on 01.02.2023

on account of alleged recovery of 217 grams of Heroin by the Excise & Narcotics Personnel from the house of one David Khiang at Edentharr Veng, Aizawl. Accordingly, Excise & Narcotics Case No. 32/2023 dated 01.02.2023 under Section 21(b) of the ND&PS Act was registered. Upon completion of the investigation, the Excise authorities filed their chargesheet on 25.03.2023 before the Trial Court. The learned counsel submits that out of the six (6) prosecution witnesses except for PW-5, all the witnesses have been already examined. Referring to the deposition of PW-6, who is the Investigating Officer, the learned counsel submits that as per the said witness, accused Lalnunkimi, who is the elder sister of the present petitioner did not make any statement whether the petitioner was involved in the case or not when he had interrogated the accused Lalnunkimi. The petitioner also stated that she had merely accompanied her sister because she wanted to have a medical check-up and they stayed as guest in the house of David Khiang.

[3.] The learned counsel by further referring to the deposition of PW-6 submits that according to PW-6, he also found prima facie case under Section 21(b) of the ND&PS Act against the present petitioner even though she pleaded her innocence during the investigation because he found it impossible for her to be unaware of the activities of her elder sister since they are staying as guest in the house of David Khiang where customers come and go. The learned counsel submits that from the deposition of PW-6, it is clear that the Investigating Officer found a prima facie case against the petitioner by assuming that the petitioner should be aware about the activities of her sister and her friends. He submits that although Section 35 & Section 54 of the ND&PS Act no doubt raised presumption with regard to the culpable mental state on the part of the accused and also places the burden of prove in this behalf on the accused; but the presumption would operate in the trial of the accused only in the event the circumstances contained therein and fully satisfied. Initial burden lies on the prosecution and when it stands satisfied, the

burden would shift on the accused. While the burden upon the prosecution is to prove the case beyond reasonable doubt but in case of the accused, preponderance of possibility would suffice and not strict prove as in the case of the prosecution. Therefore, from the evidence of the I/O (PW-6) herself, no conclusion can be drawn that burden cast upon the prosecution has been discharged and therefore he submits that it is a fit case for granting bail to the petitioner. In support of his submission, he relies upon the case of *Noor Aga -Vs- State of Punjab & Anr. (2008) 16 SCC 417* and *Hanif Khan Alias Annu Khan -Vs- Central Bureau of Narcotics reported in (2020) 16 SCC 709*.

[4.] Mrs. Mary L. Kiangte, learned Addl. Public Prosecutor submits that from the evidence led by the prosecution, more particularly the Investigating Officer, it can be clearly appreciated that the petitioner having stayed along with her sister in the house of David Kiang, who was instrumental in the disposal of the narcotic drugs that the petitioner is clearly aware about the other co-accused person including her sister dealing in drugs. Therefore, the statement of the case I/O cannot be said to be a mere presumption. She further submits that the petitioner admittedly is also a Myanmar national and she had crossed over the border on account of the prevailing situation there in Myanmar. Even on this ground, bail should not be granted.

[5.] I have heard the submissions made by the rival parties and I have perused the materials available on record. The petitioner had earlier approached this Court through Bail Application No. 20/2023 along with two (2) others. This Court vide Order dated 17.07.2023 noticed that trial had already begun and the recovery of the alleged drugs from actual physical possession was irrelevant and also the fact that the instant petitioner had travelled along with her elder sister who was alleged to have brought the drugs, from Myanmar declined to grant bail to the petitioners.

In the present Bail Application, the projection made by the petitioner is that out of the six (6) prosecution witnesses cited, except for PW-5 who is the expert from the FSL, all other prosecution witnesses have been examined including the case I/O as PW-6. Upon perusing the deposition of PW-6 made before the Trial Court, there appears to be no incriminating materials against the petitioner showing her involvement in the alleged crime. I have perused paragraph No. 5, 6 & 13 of the evidence led by PW-6 and the same goes to show that since the petitioner happened to be there at the place where the drugs was seized, the case I/O had strong prima facie view that it was impossible for the petitioner not to know that the owner of the house as well as her sister were dealing in drugs. In other words, the case I/O found a prima facie case on the basis of his presumption during the investigation.

[6.] The Apex Court in *Hanif Khan Alias Annu Khan* (supra) in the given facts of that case held that the prosecution under the ND&PS Act carries a reverse burden of prove with a culpable mental state of the accused. The accused is presumed to be guilty consequent to the recovery of contraband from him and it is for the accused to establish his innocence unlike normal rule of criminal jurisprudence that an accused is presumed to be innocent unless proved guilty. But that does not absolve the prosecution from establishing a prima facie case only whereafter the burden shift to the accused. The case of *Noor Aga* (supra) was also referred to and adopted.

[7.] Thus, upon due consideration, the petitioner is found entitled to be granted bail pending conclusion of the trial. Although the learned Addl. Public Prosecutor had raised the apprehension that the petitioner being a Myanmarese national and there is every possibility of her absconding before the trial is concluded but the fact remains that the petitioner has not been booked under any provisions of law

relating to foreigners and therefore, the apprehension expressed is not being accepted.

[8] In the result, bail is granted to the petitioner with the following conditions:- (i) The petitioner shall be released on bail on her furnishing a bail bond of Rs. 50,000/- with one (1) surety of the like amount, who shall be local and permanent resident of Aizawl. (ii) The petitioner shall not leave the jurisdiction of the learned Trial Court without obtaining prior permission. (iii) The petitioner shall make herself available as and when she is required to do so in connection with the ongoing trial.

[9.] It is also made clear that any observation made herein above is only for the purpose of considering grant of bail to the petitioner and it shall have no bearing whatsoever on the merit of the case in the trial proceeding.

[10.] With the above observations and directions, Bail Application stands disposed of.

JUDGE

Comparing Assistant