

GAHC030002412024



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

Case No. : Bail Appln./44/2024

Sh. Margona Reang
S/o Niloram Reang
R/o Medlicherra, Balipipla
P.S Bazaricherra, Karimganj District, Assam.

VERSUS

The State of Mizoram
Aizawl

Advocate for the Petitioner : Sh Ram Murmu

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

ORDER

BEFORE
HONOURABLE MR. JUSTICE NELSON SAILO

25.04.2024

Heard Mr. Siraj Choudhury, learned counsel for the petitioner and Mrs. Mary L. Khiangte, learned Addl. Public Prosecutor for the State.

[2.] By filing this application under Section 439 Cr.PC, the petitioner prays for his release on bail. The petitioner was arrested on 21.12.2022 on account of the alleged

recovery of 37.100 kg of suspected ganja from the possession of one Sh. Rohen Lalchhanhima. The said person was arrested and according to him, he had bought the seized Ganja from the instant petitioner. As such, the petitioner was also arrested. Accordingly, Kanhmun P.S Case No. 31/2022 was registered under Section 20(b) of the ND&PS Act and investigation was conducted. Upon completion of the investigation, the Investigating Authority filed the charge sheet on 15.03.2023, which was thereafter forwarded to the Chief Judicial Magistrate, Mamit. Charge was framed against the petitioner under the aforesaid Section of law and to which, he pleaded not guilty and claimed for trial. Accordingly, trial has commenced. The prosecution has cited as many as seven (7) prosecution witnesses and out of which PW Nos. 1 & 2, who are the complainant and one of the seizure witness respectively have been examined so far.

[3.] The learned counsel for the petitioner submits that the seizure of the alleged ganja was not made from the possession of the petitioner and that he has no involvement in the matter. He submits that from the deposition of PW Nos. 1 & 2, no case has been made out against the petitioner to implicate him on the alleged seizure of the ganja. The learned counsel in this connection has drawn the attention of this Court to paragraph No. 7 of the deposition of PW-1 and submits that the petitioner has been arrested only on the ground of suspicion as no recovery was made from his possession. He submits that in order to implicate the petitioner, suspicion alone is not sufficient but there has to be proof or that reasonable ground should exist that the petitioner is guilty of the alleged offense in terms of Section 37 of the ND&PS Act. By

further referring to the deposition of PW No. 2, the learned counsel also submits that even before the PW No. 2 arrived at the place of occurrence to be a seizure witness, the police personnel had already conducted search of the vehicle concerned. Therefore, PW-2 did not witness the seizure of the alleged ganja and as such, there is no evidence led by PW No. 2 to implicate the petitioner to the charged offense. The learned counsel thus submits that pending conclusion of the trial, the petitioner may be released on bail and that the petitioner is ready to cooperate with the trial proceedings. In support of his submission, the learned counsel relies upon the Judgment dated 28.03.2023 passed by Apex Court in *Criminal Appeal No. 943/2023 Mohd Muslim @ Hussain -Vs- State (NCT of Delhi)*.

[4.] Mrs. Mary L. Khiangte, learned Addl. Public Prosecutor on the other hand submits that the contraband substance may not have been seized from the physical possession of the petitioner but the fact remains that he was conscious about the transportation of the said contraband substance since he sold it to the co-accused person Sh. Rohen Lalchhanhima. Therefore, he cannot take the stand that he is innocent and does not know anything about the contraband substance which was seized. The learned Addl. Public Prosecutor further submits that the trial is at the very initial stage and therefore, bail should not be granted to the petitioner. She submits that the petitioner moreover is not a local resident of the State and therefore, there is every likelihood of him jumping bail and not participating in the trial proceedings, if released on bail. She also submits the nature of the allegation and the quantity of the

contraband substance recovered is a huge quantity and therefore, having regard to the role of the petitioner, the pre-condition set out in Section 37 of the ND&PS having not been satisfied, bail should not be granted to the petitioner. She finally submits that the five (5) remaining witnesses are yet to be examined and therefore, at this stage the petitioner cannot claim that there are no incriminating evidence and materials against him or that he is innocent of the charge.

[5.] I have heard the submissions made by the learned counsels for the rival parties and I have perused the materials available on record. PW No. 1 is the complainant and in his deposition on oath, he stated that the co-accused person Sh. Rohen Lalchhanhima was thoroughly examined during the investigation and that he stated that he collected the seized contraband substance from the present petitioner at the rate of Rs. 4,000/- per kg for further selling the same in Aizawl @ Rs. 6,000/- per kg. He stated that he had paid Rs. 30,000/- to the present petitioner by G-Pay and the remaining balance was to be paid after selling the Ganja at Aizawl. The petitioner who was also apprehended stated that he collected the ganja from one Bikash Debbarma of Tripura at @ Rs. 3,000/- per kg and further handed over the same to Sh. Rohen Lalchhanhima @ Rs. 4,000/- per kg. He also stated that he received Rs. 30,000/- from Rohen Lalchhanhima through G-Pay.

[6.] The petitioner also annexed his statement made under 161 Cr.PC which basically is similar to the deposition made by PW No. 1. That apart, the petitioner stated that he was currently living in Medilicherra, Kamrimganj District, Assam with his family and

he earned his living as a Gardener. He started selling ganja from the year 2021. He came in contact with Sh. Rohen Lalchhanhima from the year 2022 and the latter used to buy ganja from him in small amount. The Investigating Officer in the Arrest and Court Surrender Form has recorded that the petitioner is not dangerous and does not have past criminal record but however, he has indicated that the petitioner is likely to escape or jump bail and that if he is released on bail and that he is likely to commit a similar crime or threaten victims/witnesses. The statement of the petitioner recorded under 161 Cr.PC or the entries made in the Arrest and Court Surrender Form cannot be the basis for convicting the petitioner but at the same time, having regard to the provision of Section 37 of the ND&PS Act, it can certainly be the basis for having a prima facie view that there exist reasonable grounds for believing that the petitioner is guilty of such offense and that he is likely to commit similar offense while on bail. Moreover, Section 35 of the ND&PS Act provides that in any prosecution for an offence under this Act which requires a culpable mental state of the accused, the court shall presume the existence of such mental state but it shall be a defense for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.

[7.] As pointed out by the learned Addl. Public Prosecutor, trial is underway and since it is at the very initial stage, merely by appreciating the deposition of PW Nos. 1 & 2, a prima facie view cannot be taken in favor of the petitioner for his release on bail.

[8.] The case of *Mohd Muslim @ Hussain* (supra) relied upon by the learned counsel for the petitioner in the considered view of this Court does not help the case of the petitioner but support the case of the prosecution. The Apex Court has held that the conditions which courts have to be cognizant of are that there are reasonable grounds for believing that the accused is not guilty of such offence and that he is not likely to commit any offence while on bail. Such determination is only a prima facie determination for the purpose of grant of bail. As already noticed herein above, from the materials available on record, this Court is unable to come to the satisfaction that there are reasonable grounds for believing that the petitioner is not guilty of the alleged offense and that he is not likely to commit similar offense while on bail. Therefore, upon due consideration of the application and the submissions advanced by the rival parties, this Court is not inclined to grant bail to the petitioner.

[8.] Bail Application accordingly stands rejected.

JUDGE

Comparing Assistant