

GAHC030003432024



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

Case No. : Bail Appln./54/2024

Abdul Kayum
Taitekena Section, Saron Veng, Aizawl

VERSUS

The State of Mizoram
Aizawl

Advocate for the Petitioner : Ms Dinari T Azyu

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

BEFORE
HONOURABLE MRS. JUSTICE MARLI VANKUNG
ORDER

Date : 25-06-2024

Heard Mr. Victor L. Ralte, learned counsel for the applicant along with Mrs. Linda L. Fambawl, learned Government Advocate for the State respondents.

2. This is an application filed under Section 439 Cr.P.C r/w Section 37 of the ND&PS Act for the release of the instant applicant/petitioner on bail.

3. The learned counsel for the applicant/petitioner submits that on 30.09.2022, the applicant was approached by one Mr. Pasit, who told him that he had some money to collect from Thuampui for selling his vegetables for

which he requested the applicant to accompany him as a translator/interpreter. The co-accused, Mr. Ajir Uddin was also with Mr. Pasit. When they reached Thuampui, Helipad Mr. Pasit had suddenly ran away but he was arrested by the Excise personnel. The Excise personnel also arrested Mr. Ajir Uddin from whose possession they seized 10050 suspected to be Methamphetamine weighing 1.005 kgs. The applicant was also arrested along with the other two co-accused. The learned counsel for the applicant submits that the applicant was not aware of the possession of the said seized Methamphetamine tablets and that he had simply accompanied the accused persons to Thuampui.

4. The learned counsel submits that there were 6 (six) numbers of witnesses list in the charge sheet and so far, 4 (four) numbers of witnesses have deposed in the Court. The remaining 2 (two) witnesses are the JMFC before whom the inventory was prepared and the FSL Assistant Director. The learned counsel submits that from the evidence adduced by the witnesses, who are the Seizing Officer, the civilian witnesses and the case I.O, it can be seen that the instant applicant is innocent of the charge under Section 22(c), ND&PS Act since the SA was not seized from his possession and the prosecution witnesses have not implicated him in the case.

5. The learned counsel thus submits that the SA was not seized from the possession of the applicant which is clear from the statement of the seizure witnesses and the case I.O. He therefore submits that the applicant is innocent of the charge under Section 22(c) of ND&PS Act and the examination of the remaining two other witnesses could not make any difference since the SA was not seized from the possession of the applicant.

6. The learned counsel submits that the said applicant has been residing in the State of Mizoram at Saron Veng for the past 7 years, wherein he has no previous conviction or involvement in any criminal case. That there is no likelihood of him absconding since he is engaged as a Mistiri within the State. The learned counsel has submitted a certificate issued by the Local Council, Secretary of Saron Veng and the Inner Line Permit of the said applicant, wherein the sponsored of the applicant is a local person from Saron Veng. The learned counsel thus, submits that the applicant has been in Judicial Custody since the day of his arrest for the offence which he has not been committed by him and prayed that he may be released on bail till the disposal of the instant Criminal Trial (Ex.) No. 1836/2022. The learned counsel in support of his submission has cited ***Union of India Vs. Shiv Shanker Kesari***, reported in ***(2007) 7 SCC 798*** (para 6 to 11).

7. Mrs. Linda L. Fambawl, learned Public Prosecutor, on the other hand has strongly objected to the release of the instant applicant on bail submitting that the trial of the case is almost complete and only 2 (two) prosecution witnesses remain to be examined. The learned Public Prosecutor also submits that the guilt of the applicant is likely to be proved since his involvement has been mentioned in the deposition of prosecution witness No. 6 who has stated that the applicant had received Rs. 5000/- for accompanying the other two accused persons at Thuampui. She further submits that it can be seen from the documents that the seized article was seized from the applicant along with the other two accused persons.

8. The learned Public Prosecutor further submits that the instant applicant is

not a permanent resident of the State and if released on bail at this stage, there is every possibility of him absconding since it is clear that he is guilty of the offence under Section 22(c) of the ND&PS Act.

9. Having heard the submissions made by the learned counsels for both the parties, this Court find it appropriate to refer ***Union of India Vs. Shiv Shanker Kesari (Supra)***, wherein at para 6 to 11 it is mentioned that the Apex Court that:

“6. As the provision itself provides no person shall be granted bail unless the two conditions are satisfied. They are; the satisfaction of the Court that there are reasonable grounds for believing that the accused is not guilty and that he is not likely to commit any offence while on bail. Both the conditions have to be satisfied. If either of these two conditions is not satisfied, the bar operates and the accused cannot be released on bail.

7. The expression used in [Section 37 \(1\)\(b\) \(ii\)](#) is "reasonable grounds". The expression means something more than prima facie grounds. It connotes substantial probable causes for believing that the accused is not guilty of the offence charged and this reasonable belief contemplated in turn points to existence of such facts and circumstances as are sufficient in themselves to justify recording of satisfaction that the accused is not guilty of the offence charged.

8. The word "reasonable" has in law the prima facie meaning of reasonable in regard to those circumstances of which the actor, called on to act reasonably, knows or ought to know. It is difficult to give an exact definition of the word 'reasonable'.....

11. The Court while considering the application for bail with reference to [Section 37](#) of the Act is not called upon to record a finding of not guilty. It is for the limited purpose essentially confined to the question of releasing the accused on

bail that the Court is called upon to see if there are reasonable grounds for believing that the accused is not guilty and records its satisfaction about the existence of such grounds. But the Court has not to consider the matter as if it is pronouncing a judgment of acquittal and recording a finding of not guilty."

10. In light of the above observation of the Apex Court, this Court finds that the applicant has been charged under Section 22(c), wherein the ingredients required to constitute the offence are that the accused should act "*in contravention of any provision of this Act or any rule or order made or condition of licence granted thereunder, manufactures, possesses, sells, purchases, transports, imports inter-State, exports inter-State or uses any psychotropic substance*".

11. This Court finds that on perusal of the evidence adduced by the prosecution witnesses, it is not mentioned that the SA was seized from the possession of the instant applicant but from the possession of the co-accused Ajir Uddin. The case I.O himself has also not mention of the seizure of the SA from the possession of the instant applicant. This Court is therefore of the considered view that prima facie the deposition of the prosecution witnesses also do not indicate the involvement of the applicant in manufactures, possesses, sells, purchases, transports, imports inter-State, exports inter-State or uses any psychotropic substance. For the said reasons, this Court at this stage finds that there are reasonable grounds to hold that the applicant could be innocent of the charge under Section 22(c), ND&PS Act.

12. This Court has also perused the documents submitted by the learned counsel for the applicant, where it has been certified that the instant applicant has been residing at Saron Veng for the past 7 years and that his Inner Line

Permit is also sponsored by a local person residing at Saron Veng. There is no record of any previous conviction or involvement of the applicant in any criminal case. This Court thus find it fit to grant bail to the applicant with a bail bond of Rs. 50,000/- with two reliable sureties of the like amount who shall be to the satisfaction of the learned Trial Court. The bail of the applicant is also under the condition that the applicant will be present regularly in the Court during the trial of the case and will not in any way hamper or tamper with the evidence during trial.

13. It may however be noted that the instant *prima facie* observations made by this Court will not influence or affect in any way the trial or proceedings of the case against the applicant in Criminal Trial (Ex.) No. 1836/2022 under Section 22(c) of the ND&PS Act.

14. Accordingly, Bail Application No. 54/2024 stands allowed and disposed of.

JUDGE

Comparing Assistant