

GAHC030004192024



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

Case No. : Bail Appln./62/2024

Bokul Uddin
Banga Masly, Karimganj, Assam

VERSUS

The State of Mizoram r/b the Secretary to Govt. of Mizoram, Excise and Narcotics
Dept.and Anr.
Aizawl2:The Officer-in-Charge
Anti-Narcotics Squad
Excise and Narcotics Dept

Advocate for the Petitioner : Mr C Lalfakzuala

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

BEFORE
HONOURABLE MRS. JUSTICE MARLI VANKUNG
ORDER

Date : 22-08-2024

Heard Mr. C. Lalfakzuala, learned counsel for the applicant along with Mrs. Linda L. Fambawl, learned Public Prosecutor for the State respondents.

This is an application filed under Section 37 of the ND&PS Act, 1985 r/w Section 439 Cr.P.C for enlargement of the applicant on bail. The application is filed for the second time, since this Court vide its Order dated 26.02.2024, in Bail Application No. 8/2024, had dismissed the earlier bail application by

directing the learned Trial Court to expedite the trial of the case in the interest of justice.

Mr. C. Lalfakzuala, learned counsel for the applicant submits that he has again approached this Court since there are new grounds for releasing the applicant on bail.

Brief facts of the case as projected by the learned counsel for the applicant is that the applicant was arrested on 28.08.2023 at 10:45 PM at Seling Village, Mizoram in connection with the alleged possession of 2 kgs of Heroin kept in 149 (one hundred and forty nine) soap cases from hidden compartments in a Bolero Pick-up BR No. AS10 AC-1929, driven by the applicant. That the applicant was not aware of the illicit articles kept in the said Bolero Pick-up driven by him and that he was instructed by the co-accused Zakir Hussain to deliver Supari from Karimganj to Aizawl Bazar and to also load 15 bags of cement from Zemabawk and to again load Supari when they reached Champhai. The applicant and the co-accused Sabir Ali had only driven the said vehicle to deliver Supari and also to deliver the cement bag and were not aware that they were transporting the illicit articles which were kept in the secret chamber in the vehicle Bolero Pick-up, which was driven by the applicant.

The learned counsel further submits that the applicant is not the owner of the Bolero Pick-up BR No. AS10 AC-1929 but that the co-accused Zakir Hussain had hired the said vehicle from the owner Akbesh Ahmed and the applicant and the co-accused were only hired to transport Supari and cement bags by the co-accused Zakir Hussain. The learned counsel submits that the real owner of the seized articles, the co-accused Zakir Hussain, was released on bail

by the learned Judge Special Court, ND&PS Act on 05.07.2024, while the applicant being innocent, is still incarcerated in the Central Jail. The learned counsel submits that there are 12 prosecution witnesses, out of which only 1 (one) prosecution witness (PW-1) was examined on 20.06.2024. He submits that PW-1, examined in the Court, is the Seizing Officer, S.I. R. Lalrinsanga. PW-1 in his cross examination has clearly stated that the accused Bokul Uddin/applicant did not mentioned before him that he knew there was a secret chamber in the vehicle and that even though PW-1 stated before the Investigating Officer that Bokul Uddion/applicant knew there was a secret chamber, this was not mentioned in his statement recorded by the Investigating Officer. The learned counsel submits that from this statement of PW-1, who is the Seizing Officer, it is clear that the applicant is innocent of the charge under Section 21(c) of the ND&PS Act, since he was not in a conscious possession of the seized articles.

The learned counsel further submits that considering the fact that, only 1 prosecution witness has been examined, while the applicant is still in judicial custody for almost 1 year on his arrest on 28.08.2023, it would take almost 3 to 4 years for the trial to be completed since there are still 11 (eleven) prosecution witnesses to be examined.

The learned counsel further led this Court to the contents of the charge sheet, wherein the case I.O had also stated that the seized article actually belonged to the co-accused Zakir Hussain, while the co-accused Zakir Hussain has been released on bail. The learned counsel also submits that the case I.O has also not charged the accused persons under Section 29 of the ND&PS Act,

to prove his involvement in the instant case and is therefore he likely to be acquitted by the Trial Court during trial. There is no sufficient evidence to prove the case against the appellant. He further submits that since the case I.O has clearly stated that the seized articles belonged to the co-accused Zakir Hussain, therefore, it can be construed when the seized article was in possession of the co-accused Zakir Hussain.

The learned counsel in support of his submissions has relied on the decision of the Apex Court in ***Rabi Prakash Vs. State of Odisha***, reported in ***2023 LiveLaw (SC) 533***, where the Apex Court had granted bail to the accused persons charged under Section 20(b)(ii)(c) of the ND&PS Act, by observing that the trial had commenced but only 1 out of the 19 witnesses have been examined and that the conclusion of the trial will, take some time. The learned Apex Court had also observed that the two conditions contained in Section 37 of the ND&PS Act may not be considered at this stage, where the accused had already spent more than three and half years in custody. That the prolonged incarceration, which is against the fundamental right guaranteed under Article 21 of the Constitution must override the statutory embargo created under Section 37(i)(b)(ii) of the ND&PS Act. He has also cited the decision of this Court in ***Lalawmpuia Vs. State of Mizoram & Anr.*** dated 21.05.2024 in Bail Application No. 47/2024, where this Court had granted bail to the accused considering the fact that the applicant was in judicial custody for more than 2 years awaiting for a completion of the trial, where only 3 prosecution witnesses were left to be examined.

On the other hand, Mrs. Linda L. Fambawl, learned Public Prosecution

has strongly objected to the release of the applicant on bail. She submits that the evidence clearly show that the seized articles of 2 Kgs of Heroin were seized from hidden compartment made in the Bolero Pickup Pick-up BR No. AS10 AC-1929, which was driven by the applicant at the time when the contraband substances, 2 Kgs of Heroin was seized. She further submits that the evidence clearly shows that the seized articles were not only seized from the possession of the applicant but that they were transported from outside the State, which is a serious offence and that the punishment prescribed under law is not less than 10 years imprisonment. That the applicant is not a residents of the State of Mizoram and is likely to abscond if released on bail at this stage.

Having heard the submissions made by the learned counsels for both the parties, this Court on considering the fact that the evidence clearly indicates that the seized articles were seized in secret compartments, specially built in the said Bolero Pick-up Pick-up BR No. AS10 AC-1929 and that the seized articles were seized while the applicant was driving the same vehicle, finds that this Court had dismissed the earlier Bail Application No. 8/2024 dated 26.02.2024 on the above grounds and finds that no fresh grounds have been made out in the instant application since the statement of PW-1 who was examined in the Court, does not change the above mentioned facts. Whether the applicant was in conscious possession of the seized articles, is yet to be looked into/proved, by examining the remaining prosecution witnesses, and this Court finds it premature to alone rely on the statement made by PW-1 during his cross examination.

This Court, has however observed that only 1 (one) prosecution witness

has been examined so far, and that the prosecution witness PW-1 was examined on 20.06.2024, therefore, it appears that the trial of the instant case is going at a snail's pace.

In view of the above, in the interest of justice, this Court finds it fit to direct the learned Judge Special Court ND&PS Act to make an attempt to complete the examination of the remaining prosecution witnesses within 4 (four) months from the date of this order.

Accordingly, Bail Application No. 62/2024 stands dismissed and disposed of as above.

JUDGE

Comparing Assistant