

GAHC030004322024



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

Case No. : Bail Appln./64/2024

Zosangkimi
Rahsi Veng, Lunglei

VERSUS

The State of Mizoram r/b the Secretary to Govt. of Mizoram, Home Dept. and Anr.
Aizawl2:Inspector C. Ramnunmawi

Advocate for the Petitioner : Mr B Lalramenga

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

ORDER

BEFORE
HONOURABLE MR. JUSTICE NELSON SAILO

04.10.2024

Heard Mr. B. Lalramenga, learned counsel for the applicant and Ms. Linda L. Fambawl, learned Public Prosecutor for the State respondent. Brief facts of the case and also the status of the case has been mentioned in the Order dated 27.05.2024 of this Court and therefore, the same is being abstracted hereunder for brevity:-

“This is an application filed by the petitioner under Section 439 Cr.P.C read with Section 37 of the ND&PS Act for her enlargement on bail. The petitioner was arrested on 09.11.2022 in connection with recovery of 1.747 kgs of suspected heroin and for which, Lunglei P.S Case No. 162 dated 09.11.2022 under Section 21(c)/29 of the ND&PS Act was registered and investigated into. Upon conclusion of the investigation, the charge-sheet was submitted and in consequences thereof, trial has commenced i.e. CrI. Tr. No. 52/2023.

Mr. B Lalramenga, learned counsel for the petitioner submits that the petitioner is in custody ever since her arrest and by now, for a period of 1 year and 8 months. There are as many as 20 prosecution witnesses and the prosecution evidence is not likely to be completed in the near future. Therefore, the petitioner may be released on bail pending conclusion of the trial.

The grounds of bail urged by the learned counsel for the petitioner amongst others is that Section 37 of the ND&PS Act will not apply at this stage, Section 42 of the same act has been grossly violated and the FSL report submitted before the Trial Court as well as the Call Details Report (CDR) does not implicate the petitioner with the alleged recovery.

On 22.07.2024 when the matter was listed before this Court, Mrs. Linda L Fambawl, learned Public Prosecutor was given some time to obtain instructions. Further, the petitioner was also given liberty to file an additional affidavit incorporating deposition of the witnesses of the prosecution that may have been examined during pendency of the instant bail application.

Today, when the matter is listed again, Mr. B Lalramenga, learned counsel for the petitioner submits that some time may be granted to file the additional affidavit as permitted by this Court, as the depositions of the prosecution witnessess have been obtained recently only. Ms. Linda L Fambawl, learned Public Prosecutor also submits that according to the instruction received by her, CDR has been submitted before the Trial Court. Further, the information report in original is retained by the police while the duplicate has been submitted before the Trial Court.

Considering the above submission, Registry shall requisition scanned copies of the FSL report, CDR and the information report dated 08.11.2022 in connection with Lunglei P.S GDE No. 12/2022 from the Special Court. Learned Public Prosecutor shall also produce the original information report.

List the matter again on 6th August, 2024."

[2.] Ms. Linda L. Fambawl, learned Public Prosecutor today has produced scanned

copies of the CDR that was requisitioned and from a perusal of the same, it is seen that there has been telephonic communication between the applicant and the co-accused person Khupkhankhual and another person namely, Haudeihchina on 08.11.2022. The learned Public Prosecutor therefore submits that the same clearly goes to show that the applicant is involved in the case as she was expecting delivery of the consignment of the contraband substance from the accused person. As such, the applicant should not be granted bail.

[3.] Mr. B. Lalramenga, learned counsel on the hand submits nothing has been recovered from the applicant and that she has only been implicated on the basis of the statements made by the co-accused person. He submits the same will not amount to substantive evidence and therefore as there is no likelihood of the applicant being convicted at the end of the trial, she may be released on bail. He further submits that the rigors of Section 37 of the ND&PS Act will not be applicable to the case of the applicant since she has been implicated on the basis of statements made by the co-accused person during interrogation. He further submits the CDR details of the applicant and the co-accused person are materials to be examined during trial and therefore, the same may not be considered for the purpose of considering the bail application. He submits that since only 13 prosecution witnesses out of the 20 cited prosecution witnesses have been examined so far, it is unlikely that trial will come to a conclusion in a short span of

time and therefore, bail may be granted on this ground as well. In support of his submission, the learned counsel relied upon the following authorities:-

(1) State -Vs- Pallubid Ahmand Arimutta & Anr. (2022) 12 SCC 633

(2) Phundreimayum Yas Khan -Vs- State, 2023 SCC OnLine Del 135

(3) Deepak Nagiya -Vs- State (NCT of Delhi) 2023 SCC OnLine Del 5641

(4) Judgment & Order dated 27.09.2022 passed in Bail Application No. 2090 of 2022 (Dimsiannem @ Pricilla -Vs- State of Assam)

(5) Order dated 22.06.2021 passed in Bail Application No. 862 of 2021 (Mazibur Rahman Mandal -Vs- State of Assam)

(6) Naeem Ahmed Alias Naim Ahmad -Vs- Govt. of NCT of Delhi, 2024 SCC OnLine SC 220

(7) Rabi Prakash -Vs- The State of Odisha, 2023 LiveLaw (SC) 533

(8) Chitta Biswas Alias Subhas -Vs- State of West Bengal, 2020 SCC OnLine SC 1536 and

(9) Nitish Adhikary alias Bapan -Vs- State of West Bengal 2022 SCC OnLine SC 2068.

[4.] I have heard the submissions made by the learned counsels for the rival

parties and I have perused the materials available on record and also the authorities relied upon. As may be noticed, 1.747 kg of suspected Heroin was recovered from the possession of the co-accused person and according to the statements made by him during interrogation, the applicant is also involved as according to him, the same was to be delivered to the applicant. The applicant was therefore arrested on 09.11.2022 and since then she is in custody. After the investigation was completed, charge sheet was filed and the prosecution have cited as many as 20 prosecution witnesses. It is stated at the bar that as many as 13 prosecution witnesses have been examined so far and that 7 prosecution witnesses remain to be examined. There is also no dispute to the fact that recovery of the seized drugs was not made from the possession of the applicant and that there are no monetary transactions showing the sale or purchase of the prohibited contraband substance implicating the applicant. The applicant has been implicated on the basis of the statements made by the co-accused person. It is also noticed that the examination of the remaining 7 prosecution witnesses admittedly would take some time and having regard to the nature and allegation made against the applicant and the probability of her conviction at the end of the trial, this Court is of the view and keeping in mind that since she has been in custody from 09.11.2022, the applicant should be released on bail, pending conclusion of the trial.

[5.] The applicant is therefore directed to be released on bail on furnishing a bail bond of Rs. 50,000/- (*Rupees fifty thousand*) only with one local surety of the like amount to the satisfaction of the learned Trial Court. Bail is granted to the applicant subject to the further condition that she will appear before the Trial Court as and when she is required to do so and that she will not leave the State of Mizoram without prior permission from the learned Trial Court. The applicant shall also not interfere with the proceeding of the trial by tampering with the witness in any manner. She shall also not indulge herself in similar offense. Violation of any of these conditions will lead to cancellation of the bail granted.

[6.] With the above observation and direction, Bail Application stands disposed of.

JUDGE

Comparing Assistant