

GAHC030004822024



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

Case No. : Bail Appln./66/2024

Md Nur Ahmed
Mangalkhali, Jubarajnagar, North Tripura

VERSUS

The State of Mizoram and Anr.
Aizawl: The Officer-in-Charge
Aizawl Police Station

Advocate for the Petitioner : Mr. C Lalfakzuala

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

ORDER

BEFORE
HONOURABLE MR. JUSTICE NELSON SAILO

23.09.2024

Heard Mr. C. Lalfakzuala, learned counsel for the applicant and Ms. Linda L. Fambawl, learned Public Prosecutor for the State. By filing this Bail Application under Section 37 of the ND&PS Act read with Section 439 Cr.PC, the applicant prays for his enlargement on bail.

[2.] It may be stated herein that this is the second time the applicant has filed a

bail application before this Court. The earlier Bail Application being Bail Application No. 33/2024 was rejected vide Order dated 27.03.2024. According to the applicant, since there are some developments in the case, the applicant has applied for bail once again.

[3.] The learned counsel for the applicant submits that the applicant was arrested along with one co-accused person by the police on 16.08.2023 at around 5:15 AM at Dawrpui New Market, Aizawl for alleged possession of suspected Methamphetamine weighing about 2.330 kilograms, which was kept in a wooden box and carried by the applicant along with co-accused person. As a result, Aizawl P.S Case No. 558/2023 dated 16.08.2023 under Section 22(c)/29 of the ND&PS Act was registered and investigated into. Upon completion of the investigation, charge sheet No. 376/2023 dated 15.11.2023 was filed by the Investigating Agency. Thereafter, charge was framed against the applicant under Section 22(c)/29 of the ND&PS Act and to which, the applicant pleaded not guilty and claimed for trial. Accordingly, trial commenced and the prosecution cited as many as five (5) prosecution witnesses to prove their case.

[4.] The learned counsel submits that so far, out of five (5) prosecution witnesses only two (2) of them have been examined namely, PW Nos. 1 & 2 on 21.05.2024. He submits that ever since his arrest, the applicant is in jail for the last 404 days. The learned counsel submits that as per Section 52 of the ND&PS Act, the

Magistrate concerned before whom the arrested person and the articles seized are produced is a vital witness but in the instant case, the Magistrate concerned has not been named as one (1) of the prosecution witness. Referring to the application submitted before the Chief Judicial Magistrate, Aizawl by the Investigating Officer on 16.308.2023, the learned counsel submits that the name of the Judicial Magistrate First Class, Aizawl District has not been mentioned and it only contains a signature. Similarly, in the list of sample drawn and the sample exhibits, which were certified by the Magistrate concerned, no name has been disclosed except for the signature. He further submits that the photograph of the alleged drugs said to have been seized have also not been taken and therefore, the provisions of Section 52 and Section 52 A(2)(b) have been violated. Therefore, the alleged seizure of the contraband and the samples drawn there from cannot be considered to be a valid piece of primary evidence. Since there is likelihood of the applicant being acquitted, bail should be granted to him. In support of his submission, the learned counsel relies upon the case of *Yusuf @ Asif -Vs- State, 2023 OnLine SC 1328*, *Dheeraj Kumar Shukla -Vs- State of Uttar Pradesh, 2023 OnLine SC 918* and Order dated 27.05.2024 passed by the High Court of Rajasthan at Jodhpur in Bail Application No. 9625/2023 (*Amjad Khan@ Akram -Vs- State of Rajasthan*).

[5.] Ms. Linda L. Fambawl, learned Public Prosecutor on the other hand submits that the bail application is filed under Section 37 of the ND&PS Act and that there

is a strong presumption and a prima facie case against the applicant that he is guilty of the offense alleged to have been committed and therefore, in view of the progress in the trial, the applicant should not be released on bail. She submits that the applicant is not a resident of the State and therefore in the event of his release on bail, there is no guarantee about his availability at the conclusion of the trial. In other words, she submits there is every chance of him absconding and therefore, even on this ground, he may not be released on bail. She also submits that the grounds taken by the applicant can be raised in the trial proceedings and considered by the Trial Court. Further, the authorities relied upon by the learned counsel for the applicant are not applicable to the instant case since the facts and circumstances involved are not similar. She thus submits that the bail application should be rejected and dismissed.

[6.] I have heard the submissions made by the counsels for the rival parties and I have perused the materials available on record. Although the counsel for the applicant has taken the plea that some developments have taken place in the case and therefore, the instant bail application has been filed before this Court after the earlier bail application was dismissed but however, it may be seen that the applicant had also raised similar ground in his earlier bail application in respect of the Magistrate concerned not having been cited as one of the prosecution witnesses and also the alleged violation of Section 52 A(2)(b). Therefore, the

contention of the applicant in the present bail application only appears to have been considered when the earlier bail application was rejected on 27.03.2024.

[7.] Further, the applicant has stated that out of the five (5) prosecution witnesses, only two (2) witnesses have been examined so far but from the scanned copy of the Trial Court records that was requisitioned, it is seen that PW Nos. 3 & 4 have been examined on 09.08.2024 by the rival parties and therefore, it is seen that four (4) witnesses have been examined by the prosecution with only one (1) prosecution witness remaining to be examined. It is also stated by the learned Public Prosecutor that 03.10.2024 is fixed as the next date for examination of PW No. 5. It is therefore seen that the trial is not only in progress but likely to conclude within a short period of time.

[8.] From a perusal of the materials on record, it is seen that the concerned Magistrate has certified the correctness of the inventory, the enclosed photograph taken and the list of sample drawn which was presented by the Investigating Officer and who happens to be PW No. 5, who is scheduled to be examined on 03.10.2024. Therefore, without the examination of PW No. 5, it cannot be concluded at this stage that there is lacuna in the investigation of the case and thereby resulting into violation of Section 52 or 52 A(2)(b) of the ND&PS Act. At any rate, the issued raised by the learned counsel for the applicant can very well be considered by the learned Trial Court, who is conducting the trial. Besides, the

trial also appears to be at an advance stage with only one (1) prosecution witness due to be examined shortly. Under the facts and circumstances, having regard to the nature of the allegation and charge, this Court is not inclined to grant bail to the applicant. In view of the observation and conclusion made in the preceding paragraphs and also the facts and circumstances in the instant case, the authorities relied upon by the learned counsel for the applicant are also found to be not applicable.

[9.] Accordingly, the bail application stands rejected.

JUDGE

Comparing Assistant