

GAHC030005392024



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

Case No. : Bail Appln./67/2024

Edenmawii
New Ngharchhip, Hnahthial, Mizoram

VERSUS

State of Mizoram and 2 Ors.
Aizawl:Commissioner
Excise and Narcotics Department
Mizoram
Aizawl

3:S.I. R. Lalrinsanga
Currently Stationed at Excise and Narcotics
Anti-Narcotic Squad
Mizoram
Aizawl

Advocate for the Petitioner : Ms. Jacinta Zothanmawii

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

BEFORE
HONOURABLE MRS. JUSTICE MARLI VANKUNG
ORDER

Date : 29.08.2024

Heard Ms. Jacinta Zothanmawii, learned counsel for the petitioner along with Mrs. Linda L. Fambawl, learned Public Prosecutor for the State respondents.

2. This is an application filed under Section 37 of the ND&PS Act, 1985 r/w Section 483 BNSS for the release of the petitioner on bail, who was arrested on 14.10.2022 on the seizure of 6.122 kgs of red and green color tablets i.e., 104074 tablets of Methamphetamine kept in a black and grey color sky bag in Ex.(N) No. 162/2022 under Section 22(c) of the ND&PS Act, CrI.Tr.(Ex.) No. 1790/2022.

3. The learned counsel submits that this is a third time the instant petitioner has approached this Court for the release of the petitioner on bail. She submits that the previous applications for the release of the petitioner on bail in Bail Application No. 22/2023 and Bail Application No. 76/2023 were dismissed by this Court, since the bail applications were made on medical grounds and this Court had observed that the petitioner was receiving the required medical treatment while she was admitted to the hospital and had also directed the Superintendent of Central Jail to ensure that the petitioner was allowed to get proper regular check-up if required once she is discharged from the hospital.

4. The learned counsel submits that she has now approached this Court on the grounds that the trial against the petitioner is at its final stage, wherein all the prosecution witnesses have been examined and the petitioner is yet to be examined under Section 313 Cr.P.C. The learned counsel submits that from the evidence adduced by the prosecution witnesses, it is seen that the 2 (two) independent witnesses have turned hostile as they do not support the evidence adduced by the Seizing Officer in their cross examination. She further submits that from the evidence of the prosecution witnesses, it is seen that there is a violation of Section 55 of the ND&PS Act and that the weight of the sample

taken from the seized contraband substances weigh less than what was examined in the FSL. She further submits that the petitioner is now detained behind the bars for a period of 1 year 10 months 7 days and such prolonged incarceration override the embargo of Section 37 of the ND&PS Act. In support of her submissions, the learned counsel has relied on the judgment of a Coordinate Bench in the Principal Seat in ***Yahiya Khan Vs. Union of India*** in Bail Appln./190/2024 dated 26.06.2024 and in ***Azim Uddin Vs. State of Assam*** in Bail Appln./974/2024 dated 20.06.2024, wherein the bail applicants were granted bail on the grounds of their long incarceration during the trial of the case.

5. Mrs. Linda L. Fambawl, learned Public Prosecutor, on the other hand has strongly objected to the release of the petitioner on bail at this stage. She submits that the seizure witnesses had not turned hostile before the learned Trial Court but had clearly stated in their statements that they were present when the seized articles were seized by the Seizing Officer. She further submits that on perusal of the evidence adduced by the prosecution witnesses, there is no violation of Section 55 of the ND&PS Act. The learned Public Prosecutor further submits that the case is now at its final stage, wherein all the prosecution witnesses have been examined and thus, there are no reasons for the release of the petitioner on bail at this stage, wherein the seized contraband substances is amounting to 6.122 kgs i.e., 104074 tablets of Methamphetamine, which is of huge quantity and the offence is of a serious nature.

6. I have heard the submissions made by the learned counsels for both the parties and have also perused the documents available on record.

7. This Court finds that the petitioner is incarcerated in jail for a period of 1 year 10 months 7 days, however the trial is now at its final stage, wherein only the examination of the petitioner/accused under Section 313 Cr.P.C remains. It is also seen that a Coordinate Bench of this Court in Bail Appln./974/2024 had granted bail to the accused who was in custody for a period of 1 year 7 months 14 days, however, it is seen that the seized articles in the instant case was 520 bottles of 1 ml each of Codeine Phosphate and out of 7 numbers of prosecution witnesses, only 3 (three) prosecution witnesses had been examined and that the independent seizure witnesses in the case had become hostile. In Bail Appln./190/2024, the accused was behind the bars for 3 years 8 months and a few prosecution witnesses still remained to be examined in the case. This Court thus finds that the facts and circumstances under which the Coordinate Bench of this Court had granted bail to the accused petitioners is different from the present case.

8. In view of the above observations, this Court finds that there are no sufficient grounds to release the petitioner on bail at this stage, wherein the trial of the case against the petitioner is at its final stage, where the case is now at the stage of examination of the accused/petitioner under Section 313 Cr.P.C. This Court is not inclined to scrutinize the prosecution evidence at this final stage of trial but has observed that none of the prosecution witness had turned hostile, contrary to what is projected by the learned counsel for the petitioner.

9. In view of the above, this Court finds it fit to dispose of the instant bail application with a direction to the learned Judge, Special Court, ND&PS Act to make an attempt and dispose of the case within 1 (one) month from the date of

this order.

10. Bail Appln. No. 678/2024 thus stands dismissed and disposed of as above.

JUDGE

Comparing Assistant