

GAHC030005472024



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

Case No. : Bail Appln./68/2024

Abdul Kalam Laskar
Sonai, Cachar, Assam

VERSUS

State of Mizoram
Aizawl

Advocate for the Petitioner : Mr. Jonathan Lalrintluanga

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

B E F O R E
HON'BLE MRS. JUSTICE MARLI VANKUNG
ORDER

14.10.2024

Heard Mr. Jonathan Lalrintluanga, learned counsel for the applicant/accused along with Mrs. Linda L. Fambawl, learned Public Prosecutor.

2. This is an application filed under Section 37 of the ND&PS Act r/w Section 483 of the BNSS for the enlargement of the applicant/accused on bail.

3. The learned counsel for the applicant/accused submits that the applicant/accused was arrested on 11.06.2023 for the alleged commission of an

offence punishable under Section 21(c) of the ND&PS Act and Criminal Trial No. 1381/2023 was registered against him on the seizure of 5.810 kgs of Heroin, kept in 501 numbers of soap cases which was recovered from a secret compartment of a vehicle, Ashok Leyland Truck 1615 HE Bearing Registration No. AS 11EC 5636. The learned counsel submits that the instant applicant has no involvement in the said seizure of the contraband substance, since he was merely a Handyman and had no knowledge about the seized article which was found in the vehicle.

4. The learned counsel submits that the case before the learned Special Judge, ND&PS Act, is in its evidence stage, wherein out of 14 prosecution witnesses, one prosecution witness who is the Seizing Officer has been examined. He submits that from the cross examination of the prosecution witness No. 1, the prosecution witness has stated that he has no documentary evidence to prove the involvement of the present applicant in the case. The learned counsel further submits that from the contents of the charge sheet, it is clear that the applicant being the Handyman of the vehicle got to know of the seized contraband substance only, when he was asked to open the secret compartment of the vehicle.

5. The learned counsel for the applicant/accused further submits that the applicant/accused has been in judicial custody for about 1 year 4 months, while out of 14 prosecution witnesses, only one prosecution witness has been examined. Thus, it appears that the trial is not likely to be completed in the near future and the applicant/accused is the sole bread winner of his family, and his mother is also presently suffering from several ailments and is presently

admitted at Silchar Medical College and Hospital. Her condition is extremely critical at this stage and she needs constant attention.

The learned counsel has relied on the order of this Court dated 27.03.2024 in Bail Application No. 32/2024, wherein this Court had granted bail to the co-accused in the instant case. The learned counsel for the applicant/accused has also relied on the order of this Court dated 21.05.2024 in Bail Application No. 47/2024, wherein the accused was enlarged on bail on the grounds that the accused had been in judicial custody for more than 2 years awaiting for completion of the trial and also being a permanent resident of Zokhawthar Champhai. The learned counsel also relied on the decision of the Apex Court in ***Naeem Ahmed Alias Naim Ahmad Vs. Govt. of NCT of Delhi***, reported in ***2024 SCC Online SC 220***.

6. Mrs. Linda L. Fambawl, learned Public Prosecutor, on the other hand has strongly objected to the release of the applicant/accused on bail at this stage. She submits that on a plain reading of the charge sheet and from the evidence of PW-1, it is clear that the 5.810 kgs of suspected Heroin was seized from the vehicle Ashok Leyland Truck, where the present applicant/accused is the Handyman of the vehicle. It is clear that the present applicant/accused had opened the secret compartment of the vehicle, from where the said contraband substance was recovered. In view of the said facts, it is clear that the applicant/accused knew about the contraband substance and which was seized while in their possession. The learned Public Prosecutor further submits that though there are 14 prosecution witnesses, all the prosecution witnesses are residents of Aizawl City and therefore, the trial is likely to be completed within a

short period. She further submits that it is clear from the prosecution evidence that the applicant/accused is guilty of the charge under Section 21(c) of the ND&PS Act and if released at this stage, since he is not a resident of Mizoram, he is likely to abscond during trial.

7. Having heard the submissions made by the learned counsels for both the parties, this Court finds that the present applicant/accused is the Handyman of the vehicle Ashok Leyland Truck 1615 HE Bearing Registration No. AS 11EC 5636 and the contraband substance was seized from a hidden compartment in the said vehicle, when the secret compartment was opened by the said applicant/accused. It is seen that the seized suspected Heroin is 5.810 Kgs (commercial quantity), and there are no reasonable grounds for believing that the applicant/accused is not likely to commit the offence u/s 21(c) ND&PS Act at this initial stage of evidence. It is also seen that though the applicant/accused has been in judicial custody for 1 year and 4 months from his arrest on 11.06.2023, the case is at its trial stage, wherein the remaining prosecution witnesses are yet to be examined. This Court also finds that the cases relied upon by the applicant/accused are not applicable in the instant case, since the facts and circumstances are found to be different. This Court also finds that in ***Naeem Ahmed Alias Naim Ahmad Vs. Govt. of NCT of Delhi (Supra)*** the seized contraband substance is 340 grams of smack (morphine) and the learned Apex Court had observed that the twin test of Section 37 of the ND&PS Act need not be invoked against the applicant.

8. Thus, considering the above facts and also considering the fact that the applicant is not a resident of Mizoram, wherein there is a possibility of him

absconding during the trial of the case, this Court is constraint to dismiss the Bail Application at this stage.

9. This Court, however find it appropriate to pass an order that the learned Trial Court should make an attempt to dispose of Criminal Trial No. 1381/2023 expeditiously, preferably within a period of 6 (six) months considering the fact that the trial has taken more than 1 year and only one prosecution witness is examined till date.

JUDGE

Comparing Assistant