

GAHC030005932024



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

Case No. : Bail Appln./73/2024

Lalhmingmawia
Ramhlun South, Aizawl, Mizoram

VERSUS

State of Mizoram and 2 Ors.
Aizawl2:Officer-in-Charge
Excise and Narcotics Department
Aizawl

3:S.I. Zothantluangi Chenhrang
Aizawl

Advocate for the Petitioner : Mr. S. Vanlalhriata

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

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

04.10.2024

Heard Mr. S Vanlalhriata, learned counsel for the applicant along with Ms. Vanneihsiami, learned Addl. Public Prosecutor for the respondent.

2. This is an application filed under section 483 BNSS for the release of the

applicant/accused on bail in connection with Excise Case No. Ex. N-141/2024. The learned counsel for the applicant/accused submits that the accused was arrested on 05.08.2024 at around 7:50 pm, by the Excise and Narcotics personnel wherein 11 grams of suspected heroine was seized from a black waist bag of the applicant/accused.

3. The learned counsel for the applicant/accused submits that on the arrest of the applicant/accused, no grounds of his arrest was noted and he was also not informed, nor was a copy of his arrest memo given to him and therefore, there is a violation of Article 22(1) of the Constitution of India as well as section 47 of the BNSS. He submits that the arrest memo only mentions that arrest intimation was given to the wife of the applicant/accused.

4. The learned counsel further submits that the applicant/accused is also entitled to be released on bail due to his medical condition, wherein he is not fit to be detained in Central Jail and medical documents are submitted, wherein it is shown that the applicant/accused is suffering from dengue fever, thrombocytopenia, and chronic liver disease. The learned counsel submits that a report of the Pathology test done on the applicant/accused, was his platelet counts is only 78000/cmm while the normal range is within (1.5 – 4.5). He therefore, submits that there is every danger that the applicant/accused, if not given proper treatment, could have serious health problems while in central jail.

5. The learned counsel also submits that on perusal of the inventory of the seized articles, it can be seen that there is a violation of Rule 10 of the Narcotic Drugs and Psychotropic Substances (Seizure, Storage, Sampling and Disposal) Rules, 2022, since it appears that the seized articles were not properly packed as per the rules.

6. The learned counsel for the applicant in support of his submission, has relied on the following authorities:- i) Prabir Purkayastha Vs. State (NCT of Delhi), reported in 2024 4 Supreme 708, ii) Union of India Vs. Bal Mukund and Ors., reported in 2009 3 Supreme 170, iii) Somnath Vs. State of Maharashtra and others, reported in 2024 3 Supreme 424.

7. Ms. Vanneihsiami, learned Addl. Public Prosecutor, on the other hand submits that, whether the grounds of arrest was informed to the applicant/accused is to be seen at the time of examination of the Seizing Officer and she submits that the arrest of the applicant/accused was duly informed to his wife, wherein along with this information the grounds of arrest could have also been informed. She submits that it is pre-mature to simply presume that the grounds of arrest was not informed, especially when the evidence clearly stated that 11 grams of suspected heroine were seized from the possession of the applicant/accused. The learned Addl. Public Prosecutor further submits that on perusal of the statement of applicant/accused under Section 161 CRPC, the applicant/accused has admitted that the seized articles were seized from his possession and that he is a drug abuser. He has further admitted that he had possessed the said suspected heroine for the purpose of sale and for his own use. That the case is now at its evidence stage and if the applicant/accused is released on bail at this stage, there is every possibility that the trial would be delayed if the applicant/accused should abscond or not attend court regularly during trial.

8. Having heard the submissions made by the learned counsel for both the parties, this Court finds that whether or not, there is a violation of Section 47 of the BNSS or not, or whether there is a violation of Article 22 (1) of the

Constitution of India has to be looked into during trial, by examining the concerned prosecution witness. This Court has also perused the medical documents duly submitted and finds that the medical documents do not mentioned that the applicant/accused, due to his medical condition, is not fit to be detained in Central Jail. Further, it is seen that the documents showing that the platelet counts of the applicant/accused is below the normal range is dated 16.08.2024 and thereafter, in the OPD card dated 29.08.2024, the doctor had prescribed certain medicines with regard to the low platelet counts. Thereafter, no further medical documents have been submitted. This Court therefore, finds that the medical documents submitted do not indicate such ailment of serious nature wherein, applicant/accused requires his release on bail.

9. This Court also finds that with regards to whether there has been any violation of the NDPS Rules, 2022, will have to be looked into during trial. This Court thus finds that unless evidence is adduced and the concerned person has examined it, it cannot be simply presumed, at this stage, that there is a violation of the rules.

10. In view of the above, this Court finds that there are no sufficient grounds for the release of the applicant/accused on bail at this stage and accordingly, the Bail Application No. 73 of 2024 stands dismissed and disposed of.

JUDGE

Comparing Assistant