

GAHC030006162024



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

Case No. : Bail Appln./75/2024

Ramchandra Das
Boxanagar, Sepahijala District, Tripura

VERSUS

State of Mizoram
Aizawl

Advocate for the Petitioner : Mr. Siraj Ali

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

ORDER

BEFORE
HONOURABLE MR. JUSTICE NELSON SAILO

22.10.2024

Heard Mr. Siraj Ali, learned counsel for the applicant, who submits that by filing this application under Section 483 of Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023 read with Section 37 of the ND&PS Act, 1985, the applicant prays for grant of bail. He submits that the applicant was arrested on the early hours of 22.08.2023 in connection with recovery of ten (10) packets containing 9.782 kgs of

suspected Methamphetamine, which were in the form of 1 lakh orange colour tablets. The same was kept in a hidden compartment in a vehicle Bolero Neo N-10 (off-white) Chasis No. MA1NA2XZXP6G89353, Engine No. XZP6G66567. The said vehicle was without registration number plate. The learned counsel submits that the applicant is innocent and has no involvement with the alleged recovery of the Methamphetamine. He submits that charge sheet has been since filed by the Investigating Authority and trial has commenced and so far, out of 9 prosecution witnesses, 7 prosecution witnesses have been examined and the next Court date is 24.10.2024.

[2.] The learned counsel submits that the applicant has been kept in custody since the last 1 year 2 months and therefore may be released on bail pending conclusion of the trial. He submits that the Investigating Agency has grossly violated Section 42 of the ND&PS Act since the information received was not recorded in writing and given to the next superior officer as mandated by law. He submits that the same is clear from the charge sheet itself since there is no document which indicates that the same was complied with.

[3.] He further submits that the charge sheet does not mention about the date of manufacture and the details of the recovered drugs and therefore, without there being any such specification, the trial itself is vitiated. Since there is no chance for conviction of the applicant, he should be released on bail. In support of his

submission, the learned counsel relied upon the following authorities:-

- (1) Sarija Banu (A) Janarthani & Ors. -Vs- State through Inspector of Police, 2004 Legal Eagle (SC) 1187.*
- (2) Order dated 08.08.2023 passed by this Court in Bail Application No. 28/2023 (Sh. Lalbiakkima -Vs- State of Mizoram).*
- (3) Sukhdev Singh -Vs- State of Haryana, 2012 Legal Eagle (SC) 679.*
- (4) Rabi Prakash -Vs- State of Odisha, 2023 Legal Eagle (SC) 697 and*
- (5) Order dated 28.05.2024 passed by the Supreme Court of India in Special Leave to Appeal (Crl) No. 4648/2024 (Ankur Chaudhary -Vs- State of Madhya Pradesh)*

[4.] Ms. Vanneihsiami, learned Addl. Public Prosecutor on the other hand submits that before coming to this Court, the applicant has filed a bail application before the learned Special Court, ND&PS Act and the bail application being Bail Application No. 702 of 2024 along with 703 of 2024 were disposed of vide common order dated 24.06.2024 by rejecting the bail application of the applicant and the other co-accused person. She submits that it is clear from the reasons recorded by the learned Trial Court that from a perusal of the deposition of the Investigating Officer and the Seizing Officer, the contraband substance of commercial quantity were

recovered and seized from the joint possession of the accused applicants and both the applicant belong to the neighboring State of Tripura.

[5.] It was further recorded that against the allegation of violation of Section 42 of the ND&PS Act, the Court find that the information was indeed reduced to writing and submitted to the superior officer i.e., the Officer-in-Charge, Anti-Narcotic Squad (E&N), Aizawl who had also countersigned the same. The Seizing Officer was an Assistant Sub-Inspector duly empowered by the State Government under Section 42 of the ND&PS Act and this information report is duly submitted to the superior officer within the stipulated time as per Section 42 (2) of the ND&PS Act. Therefore, the provision of Section 41 of the Act was found to be not attracted and that the two condition of Section 37 of the ND&PS Act was not satisfied by the accused applicants and accordingly the bail applications were rejected. The learned Addl. Public Prosecutor therefore submits that it is clear that there is no violation of Section 42 of the ND&PS Act as alleged by the instant applicant and therefore, no ground has been made out for grant of bail. She further submits that since the applicant is not a resident of the State of Mizoram, there is every likelihood of him absconding and there is no likelihood of securing his presence at the end of the trial. She submits that under the facts and circumstances, the application for bail be rejected.

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

parties and I have perused the materials available on record. Facts not in dispute is that an amount of 9.782 kgs of Methamphetamine (1 lakh tablets of orange colour) were recovered from the vehicle concerned wherein, the applicant was one of the occupant of the said vehicle. The investigation revealed that the same was obtained by the applicant from the co-accused person who appears to be a resident of Myanmar. From the statements recorded, the other co-accused persons were arrested from Edenthur locality. The statements of the applicant however reveals that they were sent by one person named Mabarul Mab from Tripura to collect the alleged drugs. Accordingly, the same was collected at a place called Lengte Peng wherein, they were apprehended by the Excise Personnel.

[7.] Section 37 of the ND&PS Act provides that in a case of such nature, the Public Prosecutor has to be given an opportunity to oppose the application for release of the applicant on bail and on such opposition, if the Court is satisfied that there are reasonable grounds for believing that the applicant is not guilty of such offence and not likely to commit a similar offense while on bail, may consider release of the person on bail. In the present case, the material on record goes to show that the alleged drugs were recovered from the conscious possession of the applicant. The applicant no doubt has been in custody for the last more than 1 year but at the same time, it is seen that trial is proceeding at a good pace since as many as 7 seven prosecution witnesses have been examined out of the 9

prosecution witnesses. Moreover, the next court date has been fixed as 24.10.2024. Therefore, this Court is of the considered view that the applicant should not be released on bail at this stage.

[8.] Referring to the authorities cited by the learned counsel for the applicant, it may be seen that *Sarija Banu (A) Janarthani & Ors.* (supra) as relied upon for violation of Section 42 of the ND&PS Act will not be attracted in view of the observation and finding as recorded herein above and likewise, the case of *Sh. Lalbiakkima* (supra) and *Sukhdev Singh* (supra) as well. In the case of *Rabi Prakash* (supra), the recovery made in that case was 247 kilograms of Ganja and the accused person has been incarcerated for more than 3 and half years without him having any previous criminal antecedents. It was also found by the Supreme Court that out of the 19 prosecution witnesses cited by the prosecution, only 1 prosecution witness has been examined. It was under such circumstance that the accused person was released on bail. The present case otherwise is not similar to what has been referred to.

[9.] Accordingly, the authorities cited by the learned counsel for the applicant is found to be not relevant and the bail application stands disposed as rejected.

JUDGE

Comparing Assistant