

GAHC030006242024



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

Case No. : Bail Appln./76/2024

Jayanta Das
Sepahijala, Tripura

VERSUS

The State of Mizoram and Anr.
Aizawl2:S.I. Lallianzuala
Excise and Narcotics Dept

Advocate for the Petitioner : Mr T Lalzekima

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

**ORDER
B E F O R E
HON'BLE MR. JUSTICE NELSON SAILO**

29.10.2024

Heard Mr. T Lalzekima, learned counsel for the petitioner and Ms. Mary L Khiangte, learned Addl. Public Prosecutor for the State respondents. On 14.10.2024, Court passed the following order:-

“Heard Mr. T Lalzekima learned counsel for the petitioner who submits that by filing this application, Section 480 & 528 of the BNSS, 2023 read with Section 37 of the NDPS Act, 1985, the petitioner prays for his release on bail.

The learned counsel submits that the petitioner was arrested on 28.07.2022 in connection with Excise & Narcotics Case No. MENS-283 of 2022 dated 28.07.2022 for alleged recovery of the 2.085 Kgs of suspected heroin packed in 156 polythenes and was being carried in vehicle bearing registration No. TR-01-BQ-0507 (TATA Harrier). The learned counsel submits that the petitioner is the driver of the said vehicle but he has no involvement in the case. The petitioner has been kept in custody since the date of his arrest. He submits that out of the 10 cited prosecution witnesses barring one witness which was dropped, the prosecutions have examined only 6 witnesses and 3 witnesses remain to be examined. However, since there has been great delay in completing the trial proceedings, the petitioner may be released on bail pending conclusion of the Trial.

Issue notice returnable by 21st October 2024. Ms. Mary L Khiangte, learned Addl. Public Prosecutor accepts notice on behalf of the State and therefore, no formal notice is required. Petitioner shall serve requisite extra copies of the bail application to the learned Addl. Public Prosecutor, if not already done. The learned Addl. Public Prosecutor shall obtain necessary instructions by the next Court date.

List the matter again on 28th October, 2024."

[2.] Today, when the matter is taken up for consideration, Mr. T Lalzekima, learned counsel submits that the main thrust of his arguments is that the petitioner has been incarcerated in Jail for 824 days as on today while the trial is yet to conclude. Therefore, on this ground alone, the petitioner should be released on bail. He submits that out of the 10 (ten) Prosecution Witnesses, 7 (seven) witnesses have already been examined. PW-9 has been dropped from the arrayed witnesses and what remains now is the examination of PW-7 & PW-8. He submits that PW-7 is scheduled to be examined on 30.10.2024. Nevertheless, having regard to the prolonged incarceration of the petitioner, Court may release the petitioner on bail pending finalization of the Trial. In support of his submission, the learned counsel relies upon the following authorities:-

(1) Order dated 13.07.2023 passed by the Supreme Court in SLP (Crl.) No. 469/2023 (Rabi Prakash vs. State of Odisha).

(2) Order dated 02.08.2023 passed by a Co-ordinate Bench of this Court in Bail Appln. No. 1995/2023 (Asab Uddin vs. State of Assam).

[3.] Per Contra, Ms. Mary L Khiangte, learned Public Prosecutor submits that the amount of heroin alleged to have been recovered from the possession of the petitioner is 2.085 Kgs, which is a commercial quantity and having regard to the rigorous of Section 37 of the ND&PS Act, the petitioner has to satisfy that the twin conditions prescribed therein are satisfied. However, from the Order dated 29.07.2024 passed by the learned Trial Court in Bail Appln. No. 435/2024, it can be clearly seen that the alleged heroin that was recovered was in the conscious possession of the petitioner and that the petitioner, if enlarged on bail, is likely to commit an offence of similar nature. With the observation made by the learned Trial Court, it is clear that no case has been made out by the petitioner for grant of bail. She further submits that out of the 10 (ten) Prosecution Witnesses, 1 (one) of the witness i.e. PW-9 was dropped and only PW-7 & PW-8 remains to be examined. From the submission made by the learned counsel for the petitioner itself, it appears that PW-6 & PW-10 were examined only last month i.e. on 05.09.2024. Therefore, there is no delay in the conduct of the trial. She further submits that the authorities relied upon by the learned counsel

for the petitioner are clearly distinguishable in view of the fact that the prosecution witnesses in the case referred to failed to turn up despite issuance of several summons and that the accused person concerned was said to have been detained in Jail for over 3 & ½ years already which is not the case in the present application. She, therefore, submits that the bail application has no merit and the same should be rejected.

[4.] I have heard the submissions made by the learned counsels for the rival parties and I have perused the materials available on record, including the authorities relied upon by the learned counsel for the petitioner

[5.] The sole ground on which bail has been sought by the petitioner is prolonged incarceration i.e. the petitioner being in custody for 824 days as on today since his arrest on 28.07.2022. According to the prosecution, the recovery made from the possession of the accused persons including the instant petitioner was 2.085 Kgs of heroin. The same falls under the commercial quantity as per the ND&PS Act. Section 37 of the same Act provides that bail may be considered to be granted after giving the Public Prosecutor an opportunity to oppose the bail and the Court, on such possession, is satisfied that there are reasonable grounds for believing that the accused person is not guilty of such offence and that he is not likely to commit any offence while on

bail. The charge-sheet filed by the investigating authority goes to show that Investigating Officer found a prima facie case well established against the petitioner under Section 21(c) of the ND&PS Act and accordingly, submitted the charge-sheet. Charge was framed on 09.02.2023, under Section 21(C) read with Section 29 of the ND&PS Act and the prosecution has examined as many as 10 (ten) Prosecution Witnesses to prove the charge. As already submitted by the parties, PW-9 has been dropped and all the remaining prosecution witnesses have been examined except for PW-7 & PW-8.

[6.] The learned counsel for the petitioner has submitted that PW-7 has been summoned to be examined on 30.10.2024, which is tomorrow. The petitioner may have been in custody since his arrest on 28.07.2022 till date but the fact remains that the reason for his arrest and being kept in custody is for his conscious possession of a commercial quantity of heroin. Further, the learned Trial Court in its Order dated 29.07.2024 while rejecting the bail of the petitioner had also made an observation that from the materials available on record, it could not be presumed that the petitioner was not guilty of the alleged offence.

[7.] The Apex Court in *Rabi Prakash (supra)* had taken into consideration the fact that the prolonged incarceration generally militates against the most precious Fundamental Right guaranteed under [Article 21](#) of the Constitution and

in such a situation, the conditional liberty must override the statutory embargo created under [Section 37\(1\)\(b\)\(ii\)](#). However, the fact remains that the facts in that given case was recovered of 247 Kgs of Ganja and that the accused person had already been kept in custody for more than 3 & ½ years. Further, out of the 19 (nineteen) Prosecution Witnesses cited, only 1 (one) witness has been examined. It was under such circumstance that the Apex Court had made the observation regarding the overriding of the statutory embargo created under Section 37 of the ND&PS Act. Similarly, in the case of *Asab Uddin (supra)*, the facts in that case was that commercial quantity of Methamphetamine i.e. 907 grams had been recovered and the accused booked under Section 22 (7) of the ND&PS Act. In that case, the prolonged incarceration was for 1 year and 7 months, which is lesser than the period of incarceration already undergone in the present case. However, from a perusal of the said order, it can be appreciated that out of 8 (eight) Prosecution Witnesses, 7 (seven) witnesses had turned hostile. Further, the case Investigating Officer, despite being issued summons, had failed to turn up to give his evidence on the three consecutive dates. All these factors taken together apparently persuaded this Court to grant bail to the petitioner in that case.

[8.] The proceedings and the facts in the instant case in the considered view of

this Court are not similar. Having regard to the fact that one of the two remaining prosecution witnesses is due to be examined shortly i.e. on 30.10.2024, it cannot be presumed that the trial will not conclude in the very near future. Therefore, upon due consideration of the submissions made and the materials available on record, this Court is not inclined to grant bail.

[9.] Accordingly, the Bail Application stands rejected.

JUDGE

Comparing Assistant