

GAHC030006642023



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

**Case No. : Bail Appln./66/2023**

Smt. Lalnunpari  
D/o H. Lalzarliana  
R/o Builum, Kolasib, Mizoram.

VERSUS

The State of Mizoram  
Aizawl

**Advocate for the Petitioner** : Mr. Johny L Tochhawng

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

**BEFORE**  
**HONOURABLE MRS. JUSTICE MARLI VANKUNG**  
**ORDER**

**Date : 29-01-2024**

Heard Mr. Johny L. Tochhawng, learned counsel for the applicant/petitioner along with Mrs. Linda L. Fambawl, learned Additional Public Prosecutor for the State respondent.

2. This is an application filed under Section 439 Cr.P.C. for grant of bail to the applicant/petitioner, Lalnunpari who was arrested in connection with Excise No. 88/2023 under Section 21(b) ND&PS Act, 1985.

3. The learned counsel for the applicant/petitioner submits that the applicant was arrested on 31.03.2023 for the seizure of 57 grams of suspected Heroin from the residence of the co-accused Lalmangaihzuali. The seized articles were kept in 5 (five) navy blue color blue cases, each of them were packed in super spicy noodles polythene, which were seized in the presence of civilian witnesses.

4. The learned counsel submits that the applicant/petitioner was innocent of the charge since the seized articles were not seized from her possession but she has been made the accused only from the statement of the co-accused Lalmangaihzuali from whose residence the seized articles was seized. The deposition of PW-1, who is the Seizing Officer proves that the applicant was innocent of the charge. The learned counsel further submits that the trial after charge sheet was submitted has been kept pending for 10 months and the case is still at the stage of taking evidence of PW-3, who has failed to appear before the Court in spite of being called several times. He further submits that the applicant/petitioner is a permanent residence of Mizoram having two minor children to look after and that there is no likelihood of her absconding during the pendency of the trial or tampering with the remaining prosecution witnesses.

5. The learned counsel for the applicant/petitioner further submits that the applicant is in need of medical treatment and is not fit to be detained at Central Jail. He submits that there are no grounds for not granting bail to the applicant/petitioner submitting that the Apex Court in its judgments has held that "bail is a rule and jail is an exception". In support of his submission, he has cited (i) **Satender Kumar Antil Vs. Central Bureau of Investigation &**

**Anr.**, reported in **(2022) 10 SCC 51** (para 9 to 14), (ii) **Kheirun Bibi Vs. State of Manipur**, reported in **(1994) 1 GLR 295** (para 6).

6. Mrs. Linda L. Fambawl, learned Additional Public Prosecutor, on the other hand has strongly objected to the release of the applicant/petitioner on bail at this stage. She submits that from the charge sheet submitted and the evidence adduced so far, it can be clearly establish that the applicant/petitioner is the main accused in the instant case. She further submits that only 4 (four) prosecution witnesses are remaining to be examined and submits that from the remaining prosecution witnesses, PW-3 is the civilian witness whose mobile number has been shown in the charge sheet. She submits that under the circumstance, she will take necessary steps so that PW-3 is duly informed through the learned Additional Public Prosecutor at the District Court.

7. The learned Additional Public Prosecutor also submits that the said medical condition of the applicant/petitioner is not life threatening and there are no reasons to grant bail to the applicant/petitioner at this stage.

8. I have heard the submissions made by the learned counsels for both the rival parties and documents on record is perused.

9. The case against the applicant is for being the owner of 57 grams of Heroin and charged under Section 21(b) ND&PS Act. If found guilty and convicted, the punishment under Section 21(b) ND&PS Act is Rigorous Imprisonment which may extend to 10 years and a fine which may extend to Rs. 1,00,000/-. The case is at its trial stage, where PW-1 and PW-2 have already been examined, cross and discharged and this case is pending for examination

of PW-3. The learned counsel has claimed that summons were issued to PW-3 several times, however no documents are produced to substantiate this claim.

10. It is also seen that the applicant had approached the Trial Court for release on bail mainly on medical grounds which was rejected by the Trial Court in Bail Appln. No. 1190/2023 dated 14.07.2023. This Court finds that the medical certificate enclosed does not indicate that the applicant is not fit to be detained in Jail. This Court also finds it not proper to consider whether the applicant is innocent or not from the evidence adduced so far in a bail application.

11. Thus, considering the nature of the offence charged against the applicant, this Court finds that no sufficient reasons have been made out to grant bail to the applicant at this stage. However, this Court finds that steps are to be taken by the Trial Court to dispose of the instant CrI.Tr.Ex. No. 938/2023 expeditiously, considering the fact that the trial has been pending for 10 (ten) months.

12. The learned Trial Court should ensure that the trial is concluded and the case is disposed of within 3 (three) months from the date of receiving a certified true copy of this order.

13. Accordingly, Bail Application No. 66/2023 stands dismissed and disposed of as above.

**JUDGE**

## **Comparing Assistant**