

GAHC030006762023



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

Case No. : Bail Appln./68/2023

Smt. Lalnunsangi
D/o Zanaawla
R/o Zarkawt, Aizawl, Mizoram.

VERSUS

The 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 MR. JUSTICE MICHAEL ZOTHANKHUMA

25.01.2024

Heard Mr. Jonathan Lalrintluanga, learned counsel for the petitioner as well as Mrs. Mary L. Khiangte, learned Addl. Public Prosecutor, for the State.

2. The petitioner's counsel submits that the petitioner was arrested for possession of 2.760 kgs of heroin on 22.11.2022. He submits that heroin was recovered from land which was not the land of the petitioner. He also submits that while the record shows that the recovery of the contraband had been made on 22.11.2022, the sample had

been sent to the FSL for examination only on 02.12.2022, which implies that Section 52-A of the ND&PS Act had been violated. He submits that in terms of the decisions of the Supreme Court, violation of Section 52-A of the ND&PS Act would result in acquittal of an accused and as such, the petitioner should be granted bail in Criminal Trial No. 941 of 2023 under Section 21(c) of the ND&PS Act, 1985.

3. The learned counsel for the petitioner further submits that the co-accused Thawngnghina had stated in his statement made under Section 161 CrPC that they were living in a jhum hut in the land of the petitioner and that his wife Lalneihthari had told him that the petitioner had unloaded some goods inside his jhum hut. Thereafter, one Lalnunsangi and Lalnunpuia had visited the jhum hut as per chargesheet and had taken one plastic bag from the bushes which contained seized contraband. He submits that the petitioner has got no role to play with the unloading of any contraband or with the recovery of the same, inasmuch as, the petitioner does not know anything about any heroin that was seized by the Police. He accordingly submits that the recovery of the heroin not being made from the petitioner's land and the petitioner not having any knowledge of the same, the petitioner should be granted bail.

4. Mrs. Mary L. Khiangte, learned Addl. Public Prosecutor on the other hand submits that the recovery of drugs having been made near the jhum hut, on the land of the petitioner and the prosecution witness Lalneihthari having clearly stated that the petitioner had unloaded goods inside the jhum hut, the petitioner is the one who was in conscious/constructive possession of the seized contraband. Accordingly, the bail petition should be rejected.

5. I have heard the learned counsels for the parties.

6. The connection of the recovered contraband with the appellant is based solely on

the evidence of the prosecution witness Lalneihthari and the fact that the same was recovered from the near jhum hut. On account of the huge quantity of heroin involved and keeping in view Sections 35 and 37 of the ND&PS Act, this Court is not inclined to grant bail at this stage. Further, as some prosecution witnesses have been examined by the Trial Court, this Court is not inclined to grant bail at this stage.

The bail application is accordingly rejected.

JUDGE

Comparing Assistant