

GAHC030006812023



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

Case No. : Bail Appln./71/2023

Smt. Ngaimuanchingi
D/o Doliana
R/o Kanan Veng, Churachanpur, Manipur.

VERSUS

The State of Mizoram and Anr.
r/b the Secy. to the Govt. of Mizoram, Excise and Narcotics Department, Aizawl,
Mizoram. 2:The Officer-in-Charge
Anti-Narcotic Squa

Advocate for the Petitioner : Mr. C Lalfakzuala

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

BEFORE
HONOURABLE MRS. JUSTICE MARLI VANKUNG
ORDER

Date : 22-01-2024

Heard Mr. C. Lalfakzuala, learned counsel for the applicant/petitioner along with Mrs. Mary L. Khiangte, learned Addl. Public Prosecutor for the State respondent.

2. The instant bail application filed under section 439 Cr.P.C. read with Section 37 of the ND & PS Act, 1985 is for the enlargement of the applicant/petitioner Smt. Ngaimuanchingi on bail pending the conclusion of trial in Excise Case No. Ex-N-115/23 dated 28.04.2023 under Section 21 (b) of ND & PS Act.

3. The learned counsel submits that the applicant was arrested under Section 21 (b) of the ND & PS Act on 28.04.2023 at 12.05 A.M. at Bawngkawn Lunglei Road, Aizawl, by the Mizoram Excise & Narcotics personnel for alleged possession of 73 (seventy three) grams of Heroin. A seizure and arrest Memo dated 28th April, 2023 was made by Sub Inspector, Excise & Narcotics who seized the suspected Heroin kept in 6 blue soap cases inside a black polythene which was inside a grey tote bag carried by the applicant at Bawngkawn near Divine Mercy College. Hence, Excise Case No. Ex-N-115/23 was registered against the applicant.

4. The learned counsel submits that the charge sheet has been submitted and 2 prosecution witnesses have been examined. From the deposition and materials available on record, they are no materials to show that the applicant is guilty of the offence alleged against her. The learned counsel further submits that the statement of PW-1 and the report of seizure and arrest show that the applicant was arrested at 12:05 A.M. in the presence of civilian witnesses on 28.04.2023 without obtaining prior permission of the JMFC.

5. The learned counsel submits that this is in violation of section 46(4) of the Criminal Procedure Code. He submits that though it is alleged that prior permission was obtained from the Chief Judicial Magistrate (CJM) however, the said permission is not dated and on perusal of the cross examination of PW-1 it is seen that PW-1 who is the Seizing Officer had admitted that she had not seen or knew the accused person before the incident, however on the permission obtained for arrest of the informant the name of the applicant is shown, which contradicts the statement made by the Seizing Officer. He submits that it is clear from the evidence already adduced and the documents submitted that no prior permission was

obtained before the arrest of the applicant on 28.04.2023 at 12:05 A.M. The learned counsel further submits that this is a covered case since this court in its order dated 15.12.2023 in case No.Bail Application 64/2023 had also granted bail to the applicant for non compliance with Section 46(4) Cr.P.C., finding that the permission obtained from the CJM was not dated.

6. The learned Addl. Public Prosecutor on the other hand submits that the document shows that permission was obtained from the learned CJM before the arrest of the applicant even though, the permission obtain is not dated.

7. Having heard the submissions made by the learned counsels for both the parties, this court finds that an information was received on 27.04.2023 at around 6:00 P.M. of a women suspected to bring some Heroin from Manipur. Thereafter, on conducting search of the applicant on the road side the suspected contraband seized for seized from her possession and the Seizing Officer arrested the applicant at 12:05 A.M. on 28.04.2023. As per section 46 (4) Cr.P.C prior permission is required for arrest of a woman after sunset and before sunrise and where there is such exceptional circumstances, the Police Women shall, by making a written report, obtain permission of the JMFC, within whose local jurisdiction of the offences occur.

8. A perusal of the permission said to be obtained from the CJM shows that is it not dated and therefore considering the fact that the arrest was made at 12:05 Am and there is no explanation as to when the permission, which is not dated, was obtained, at this stage, doubt is created whether it was obtained before the arrest of the applicant. Therefore, it appears prima facie, that the provisions of section 46 of Cr.PC has not been fully complied and also considering the fact that the applicant is a woman said to be the sole bread winner

of her family looking after her 3 minor children, this court find it fit to grant bail to the applicant.

9. The applicant is allowed bail with a bail bond of Rs.40,000/- (Rupees forty thousand) and one surety of the like amount who shall be to the satisfaction of the learned trial court.

10. Accordingly, Bail Application No. 71 of 2023 stand allowed and disposed.

JUDGE

Comparing Assistant