

GAHC030006822023



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

Case No. : Bail Appln./72/2023

Sh. Basit Uddin
S/o Nizam Uddin
R/o Vill-Kabaribond, Karimganj District, Assam.

VERSUS

The State of Mizoram
Aizawl

Advocate for the Petitioner : A H Borbhuiya

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

ORDER

BEFORE
HONOURABLE MR. JUSTICE NELSON SAILO

23.02.2024

Heard Mr. A.H. Borbhuiya, learned counsel for the petitioner and Mrs. Mary L. Khiangte, learned Addl. Public Prosecutor appearing for the State. By filing this application under Section 37 of the ND&PS Act read with Section 439 Cr.PC, the petitioner prays for his release on bail.

[2.] At the outset, be it stated herein that this is the second time the petitioner has filed his bail application. The first bail application being Bail Application No. 32/2023 was disposed of vide Order dated 12.09.2023 by rejecting the bail application. The Order dated 12.09.2023 may be abstracted herein below for convenience and ready perusal:-

“Heard Mr. A.H Borbhuiya, learned counsel for the petitioner and Mr. C. Zoramchhana, learned Public Prosecutor, Mizoram for the respondent. By filing this application under Section 37 of the ND&PS Act read with Section 439 of the Cr.P.C, the petitioner prays for his release of bail.

[2.] *Brief facts of the case as presented by the petitioner is that he is the owner of TATA Yodha vehicle B/R No. AS 24 AC 2399 which is driven by one Mr. Sams Uddin. His vehicle and the driver was detained by the Police on 23.01.2023 while it was parked in the road side of Lengte road, ISPAT junction. The Police recovered 113 soap cases containing reddish and brownish powder suspected to be heroin No. 4 kept in a nylon bag which was hidden in the road side. For the said recovery, the Police arrested the petitioner and his driver.*

[3.] *The learned counsel submits that recovery of the alleged drugs*

was not from his possession and therefore, the Police could not have arrested him for such recovery. The learned counsel further submits that the petitioner is an HIV patient requiring regular medical treatment. Therefore, being lodged in jail, the petitioner is unable to receive proper treatment. The learned counsel further submits that the petitioner since his arrest on 23.01.2023 is lodged in Jail and he being the sole bread earner, his family is facing immense hardship. Even the trial which has commenced, has not progressed much as the prosecution witnesses have failed to turn up despite being summoned. He, therefore, submits that the petitioner, pending conclusion of the trial, may be released on bail.

[4.] *Mr. C Zoramchhana, learned Public Prosecutor, on the other hand, submits that the alleged substance recovered has turned out to be heroin of 76% w/w purity and a commercial quantity. Since the punishment prescribed under Section 21(c) of the ND&PS Act is very severe, the petitioner may not be released on bail. He also submits that the trial before the Court concerned is in progress and that the petitioner being a resident of the neighboring State, there is also a chance of him to jump bail and not co-operating with the trial. He, therefore, submits that the bail application may be rejected.*

[5.] *I have considered the submissions made by the learned counsels for the rival parties and I have perused the materials available on record.*

[6.] *The materials on record go to show that recovery made was 145 grams of suspected heroin kept in 113 soap cases. The same on being sent for FSL examination turned out to be heroin of 76% w/w purity. The learned counsel for the petitioner has contended that the alleged contraband substance has not been recovered from his possession and therefore, he is not liable to be prosecuted under the relevant provisions of law. However, upon perusal of the charge-sheet, it is seen that the driver of the vehicle concerned Sams Uddin had admitted before the Police that he was transporting the contraband substance from Biate village and that the same was kept hidden at the road side near ISPAT junction by the vehicle owner, which is no other than the present petitioner himself. He also stated that two other persons namely; Hussein and Gyas were also involved in the case. However, Hussein and Gyas has not been found and arrested and it is only the petitioner and the driver Sams Uddin who had been arrested in connection with the said recovery. Therefore, there appears to be a prima facie case against the petitioner for his involvement in the*

recovery of the alleged contraband substance. It is also submitted at the bar that the trial is in progress and out of the 9 (nine) prosecution witnesses, prosecution witnesses Nos. 1 to 3 have been summoned and in fact, the prosecution witness No. 3 has been summoned to give his evidence before the Trial Court today. Therefore, upon over all consideration of the case, this Court is not inclined to grant bail to the petitioner.

[7.] *As submitted by the learned counsel for the petitioner, the petitioner is a HIV patient and that he has been taking treatment for his ailment since 11.10.2021 as can be seen from the Antiretroviral Treatment Record annexed by the petitioner at Annexure-V (page-23). Considering the same, it is hereby provided that the jail authorities shall ensure that the petitioner receives proper treatment for his ailment while lodged in jail.*

[8.] *Further, the observations made in the instant bail application is only for the purpose of considering the bail application. The same should not be reckoned for the trial proceedings which should otherwise be disposed of on its own merit.*

[9.] *With the above observations and directions, the bail application is*

disposed of.”

[3.] From the above abstract, it may be seen that the petitioner had raised two (2) grounds namely, (i) That there was no recovery made from him and therefore he is innocent and (ii) He is an HIV patient requiring regular medical treatment and he being the sole bread earner of his family, he may be released on bail. This Court upon considering the grounds taken by the petitioner and upon perusal of the charge sheet found that the driver of the vehicle concerned Sams Uddin had admitted before the police he was transporting contraband substance from Biate village and the same was kept hidden at the road side near ISPAT junction by the vehicle owner, which is no other than the petitioner himself. He also stated that two (2) other persons namely, Hussein and Gyas were also involved in the case but they were not to be found. It was only the petitioner and the driver Sams Uddin who had been arrested in the said recovery. Therefore, this Court upon finding that there appears to be a prima facie case against the petitioner for his involvement in the recovery of the alleged contraband substance declined to grant bail. This Court also took into consideration the fact that out of the nine (9) prosecution witnesses, three (3) prosecution witnesses were already summoned and due to be examined shortly and even for this reason, Court declined to grant bail. As regards the petitioner being an HIV patient, this Court was of the view that proper treatment can be given to the petitioner even he is lodged in jail. Therefore, the jail

authorities were directed to provide/facilitate the petitioner to get proper treatment for his ailment while lodged in jail.

[4.] In the present bail application, the petitioner has not taken any new grounds but has only repeated the grounds taken by him in his earlier bail application. The learned counsel for the petitioner however submits that trial has not progress since last year. He submits that although charge sheet was filed as far back as on 18.03.2023 citing nine (9) prosecution witnesses, only one (1) prosecution witness has been examined so far. He submits that PW-2 and PW-3 were summoned to give their evidence on 22.02.2024 but they fail to turn up. It is not known as to when the trial will be completed and therefore, the petitioner will only be incarcerated in jail for a long period of time before the trial concludes. As such, he should be released on bail. In support of his submission, the learned counsel relies upon Order dated 14.12.2023 passed by the coordinate Bench of this Court in Bail Application No. 70/2023 (*Sh. Salman Uddin Laskar & Anr. -Vs- State of Mizoram*) and Judgment dated 28.03.2023 passed by the Supreme Court in Criminal Appeal No. 943/2023 [*Mohd Muslim @ Hussain -Vs- State (NCT of Delhi)*].

[5.] Mrs. Mary L. Khiangte, learned Addl. Public Prosecutor on the other hand submits that no new grounds have been taken by the petitioner in the present bail application and that this Court upon considering the earlier bail application of the

petitioner had rejected the same. Therefore, the instant bail application should also be rejected. She further submits that from the charge sheet, it is clear that the petitioner is involved with the recovery of 1458 grams of Heroin kept in 113 soap cases. As regards the trial, the learned Addl. Public Prosecutor submits that as per her instructions PW-1 was examined on 25.10.2023 and PW-2 on 24.11.2023. PW-3 was summoned to appear before the Court on 22.02.2023 but he did not turn up. She otherwise submits that the trial is progressing and since the recovery made being huge quantity of drugs, the petitioner may not be released on bail.

[6.] I have heard the submissions made by the learned counsels for the rival parties and I have perused the materials available on record. The grounds for seeking bail has in fact already been taken care of by this Court vide Order dated 12.09.2023. Although recovery was not made from the physical possession of the petitioner but from the statements made by the co-accused person and from the materials available on record, this Court had taken the view that there were no reasonable grounds for believing that the petitioner is not guilty of the offence and therefore, the bail application was rejected. Even in the present bail application, as already stated earlier, no fresh grounds are taken or available to persuade this Court have a different view to grant bail to the petitioner.

[7.] In the case of *Sh. Salman Uddin Laskar & Anr.* (supra) relied upon by the petitioner under the given facts of that case, Court held that there were reasonable

grounds for believing that the applicants were not guilty of such offence and that they are not likely to commit offence while on bail. However, in the instant case, such ground do not exist and this was the finding of this Court as per the Order dated 12.09.2023 in the earlier bail application. Therefore, the said authority is not applicable to the present case. In the case of *Mohd Muslim @ Hussain* (supra), submission made before the Supreme Court was that the appellant therein was suffering long incarceration and therefore, he was entitled to be released on bail. It was also submitted that 34 more witnesses were yet to be examined and there was little or no progress of the trial. The Apex Court therefore considering the fact that the appellant has been in custody for over seven (7) years and four (4) months and the trial has progressed at a snail's pace i.e., 30 witnesses have been examined while 34 more have to be examined. Under the circumstance, direction was issued to enlarge the appellant on bail. However, in the instant case, it cannot be said that the petitioner has been incarcerated in jail for a long time as the facts are not similar. Further, there are only nine (9) prosecution witnesses cited and out of which, PW-1 and PW-2 have already been examined. Therefore, the petitioner cannot draw similarity to his case with that of *Mohd Muslim @ Hussain* (supra). Therefore, upon due consideration and under the facts and circumstances, the instant bail application is also rejected.

[8.] Before parting with the records, having regard to the slow progress in the

trial, the petitioner will be at liberty to file appropriate application seeking the trial to be conducted expeditiously, if so advised. If such an application is filed, the same should be duly considered by the learned Trial Court on its own merit by passing appropriate orders.

[9.] With the above observation, the bail application stands disposed of.

JUDGE

Comparing Assistant