

GAHC030006862023



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

Case No. : Bail Appln./74/2023

Smt. Lalngilneii
W/o Zoramchuana
R/o Dam Veng, Champhai, Mizoram.

VERSUS

The State of Mizoram
Aizawl

Advocate for the Petitioner : Mr Zoramchhana

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

ORDER

BEFORE
HONOURABLE MR. JUSTICE NELSON SAILO

22.02.2024

Heard Mr. Zoramchhana, learned counsel for the applicant and Mrs. Linda L. Fambawl, learned Addl. Public Prosecutor appearing for the respondent.

[2.] By filing this application under Section 439 Cr.PC read with Section 37 of the ND&PS Act, 1985, the petitioner prays for grant of bail. Be it stated herein that this

the second time the petitioner has filed a bail application before this Court. The earlier bail application being Bail Application No. 53/2023 was rejected vide Order dated 29.11.2023. However, the petitioner claims that she is compelled to file the present bail application due to the fact that no transaction appears to have been done through her Bank Account as alleged by the Investigating Authority. Further, seizure of substantial amount of Heroin weighing 5.114 kgs recovered near Saichal village in Saitual District was through a joint operation between the Mizoram Police, Excise & Narcotics Department and the Assam Rifles. However, no information to that effect has been reflected by the Investigating Authority. Thirdly, the petitioner contends that she is suffering from Pulmonary Tuberculosis and she has also referred to the Out Patient Department (OPD) for investigation. Therefore, the petitioner prays that she be released on bail.

[3.] The case of the petitioner briefly is that the petitioner was arrested on 14.07.2023 in connection with the alleged recovery of 5.114 kgs of Heroin which was seized from four (4) non-mizos and which was concealed in two (2) vehicles namely, white Bolero bearing registration No. AR 02 M 0543 and red Grand Vitara bearing registration No. TR 07 F 0451. As a result, Excise Case No. N-200/2023 dated 15.07.2023 under Section 21(c) of the ND&PS Act was registered and investigated into.

[4.] Mr. Zoramchhana, learned counsel for the petitioner submits that the

petitioner is not involved with the alleged recovery of the seized article in any manner and that the same was not recovered from her. He submits that the petitioner was in Aizawl at the time when the alleged recovery was made. He submits that the petitioner is carrying out the business of selling vegetables and at the time of her arrest, she had come down to Aizawl from Hnahlan for medical check-up along with her husband and driver. Besides arresting her husband, the driver was also picked up but they were subsequently released on the prayer made by the Investigating Officer on 21.07.2023. He further submits that the medical condition of the petitioner is not conducive for her to stay in jail and she requires proper treatment outside the jail. He further submits that the Investigating Authority submitted the charge sheet on 19.12.2023 and from a perusal of the same, the involvement of the petitioner on the seizure of the alleged drugs cannot be seen. After the petitioner was arrested, her statement was recorded and the same was made under duress. Therefore, the statement made by the petitioner cannot be used against her and moreover, the same would be in clear violation of Section 25 of the Evidence Act, 1872. In support of his submission, the learned counsel relies upon the case of *Raju Premji -Vs- Custom, NER, Shillong Unit (2009) 16 SCC 496*.

[5.] The learned counsel further draws the attention of this Court to the news on the media under the name and style "NortheastIndia.blog" dated 15.07.2023

wherein, it has been clearly stated that on a joint operation conducted by the Mizoram Police, Excise & Narcotics Department and the Assam Rifles, 5.114 kgs of Heroin was seized near Saichal village in Saitual District. He submits that the same has not been reflected in the Charge sheet filed by the Excise Department. Therefore, this also contributes to the unreliability of the investigation conducted by the Excise Department and the Police Department warranting the release of the petitioner on bail. The learned counsel thus submits that under the facts and circumstances, the petitioner may be released on bail.

[6.] Mrs. Linda L. Fambawl, learned Addl. Public Prosecutor on the other hand submits that the earlier bail application was also rejected by this Court and that no new grounds are available in the present bail application warranting release of the petitioner on bail. She submits that from a perusal of the charge sheet and its enclosure, it can be clearly seen that the petitioner is one (1) of the responsible person for organizing the transportation of the illegal drugs and that she is also earning some profit from the transaction by committing her Bank Account for making the transaction. She submits that although the seized drugs may not have been recovered from her physical possession but the fact remains that she has assisted in the transaction of the said drugs and therefore, she is liable to be prosecuted for abetting under Section 29 of the ND&PS Act. Further, the amount of Heroin recovered being a commercial quantity, the punishment prescribed is severe

and is covered under Section 21(c) of the ND&PS Act. Under the facts and circumstances, the bail application should be rejected.

[7.] I have heard the submissions made by the learned counsels for the rival parties and I have perused the materials available on record. The earlier bail application was filed by the petitioner during the time of investigation and the present application has been filed after filing of the charge sheet. This Court upon being satisfied that there are materials available to proceed against the petitioner after perusing the Case Diary produced by the learned Addl. Public Prosecutor had rejected the bail application. The learned counsel for the petitioner has produced a copy of the charge sheet filed by the Excise Department on 19.12.2023 wherein, it is stated that the petitioner herself stated that she was involved in the Heroin business to earn money. She had in fact contacted the seller of Heroin from Myanmar and the buyer from Tripura. She could speak some Hindi whereas the seller from Myanmar could not speak Hindi and therefore, she made the arrangement for selling of the Heroin for her contact in Myanmar for the said transaction of buying and selling of the Heroin. She allowed her IDBI Bank Account to be utilized and for which she received bonus from the seller. Therefore, upon finding prima facie case under Section 29 read with Section 21(c) of the ND&PS Act, the charge sheet was filed against the petitioner and the other persons found to be involved. As already stated, this Court upon perusing the Case Diary and also

the provisions of Section 37 of the ND&PS Act had rejected the bail application filed by the petitioner.

[8.] By filing a fresh application, the petitioner has taken the stand that the statement made by her before the police or Excise cannot be used against her and in this connection has cited the case of *Raju Premji* (supra). In the given facts of that case, the Apex Court held that the conviction of the accused persons cannot be sustained since the conviction was in violation of Section 26 of the Evidence Act and also due to failure of compliance of Section 50 of the ND&PS Act. However, in the instant case, the trial is only under process and the Court is yet to come to a finding as to whether the petitioner should be convicted for abetting the transaction/supply of the seized drugs. Section 37(1)(b)(ii) of the ND&PS Act provides that the release of the accused person on bail or on his own bond will be subject to the Court being satisfied that there are reasonable grounds for believing that the accused person is not guilty of committing such offense and not likely to commit any offense while on bail. From a perusal of the charge sheet and the documents appended to it, it may be seen that the non-involvement of the petitioner cannot be presumed. The seized article may not have been seized from her physical possession but there are materials to show that she has facilitated the sell transaction and also the accommodation of those persons transporting it. Under such circumstance, the authority relied upon by the learned counsel for the

petitioner is found to be not applicable.

[9.] The petitioner has also taken the ground that the charge sheet does not reflect that seizure of 5.114 kgs of suspected Heroin was done by a joint operation conducted by the Mizoram Police, Excise & Narcotics Department and the Assam Rifles and therefore, bail should be granted to the petitioner. This Court fails to see as to how the same can be a ground for release of the petitioner on bail. As already stated, there are materials available in the charge sheet to show that the petitioner is involved in the transaction and transportation of the illegal drugs, which was seized. The plea of the petitioner that no transaction appears to have happened through her Bank Account and therefore, she should be released on bail also cannot be accepted when there is a prima facie satisfaction that there are some elements which suggest involvement of the petitioner. It may be stated that Court is not examining the merit of the case but only examining as to whether there are reasonable grounds to believe that the petitioner was not involved in the alleged offense said to have been committed.

[10.] Therefore, upon due consideration and having regard to the fact that recovery made is a huge commercial quantity, this Court is not inclined to grant bail to the petitioner. Accordingly, bail application stands rejected. In so far as the medical condition of the petitioner is concerned, as already directed earlier, the Special Superintendent of Central Jail shall ensure that the petitioner gets proper

treatment.

[11.] Bail Application accordingly stands disposed of.

JUDGE

Comparing Assistant