

GAHC030006902023



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

Case No. : Bail Appln./76/2023

Smt. Edenmawii
New Ngharchhip, Lunglei, Mizoram

VERSUS

State of Mizoram
Aizawl

Advocate for the Petitioner : Ms. Jacinta Zothanmawii

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

BEFORE
HONOURABLE MRS. JUSTICE MARLI VANKUNG
ORDER

Date : 22.01.2024

Heard Ms. Jacinta Zothanmawii, learned counsel for the applicant along with Mrs. Mary L. Khiangte, learned Additional Public Prosecutor for the State respondent.

2. This is an application filed under Section 37 of the ND&PS Act, 1985 r/w Section 439 Cr.P.C. for release of the accused/applicant on bail during the pendency of the Criminal Trial (Ex.) No. 1790/2022 under Section 22(c) of the ND&PS Act.

3. The learned counsel for the applicant submits that the applicant was arrested on 14.10.2022 at around 2:00 PM at Sakawpui Lui, Electric Veng, Aizawl for alleged possession of 6.122 kgs of red and green colour tablets i.e., 104074 tablets of suspected Methamphetamine kept in a black and grey coloured sky bag along with the co-accused Dinsangi. She submits that a case was accordingly registered as Excise (N) No. 162/2022 dated 15.10.2022 against her and the other accused persons. She submits that charge sheet has been submitted and trial of the case has commenced. The stage of the case is for evidence of PW No. 3.

4. The learned counsel submits that the Bail Application No. 27/2023 was previously submitted before this Court and this Court had rejected the bail application vide Order dated 17.07.2023. The learned counsel submits that she has now again approached this Court for release of the applicant on medical grounds. The learned counsel submits that the applicant is diagnosed with B/L Pyelonephritis and Intramural Fibroids with recurrent hematuria and also diagnosed with Bilateral Profound Hearing Loss while she is in Judicial Custody at Central Jail, Aizawl. On 02.05.2023, the applicant was referred to Civil Hospital and again referred on 12.05.2023, 18.05.2023 and 24.07.2023, wherein the applicant was given medical treatment after due investigation.

5. The learned counsel has produced the letter dated 18.01.2024 issued by Dr. Lalmuankimi, MD, Consultant, Department of Medicine, Civil Hospital, Aizawl issued to (To whom it may concern) certifying that "*the applicant is a case of type of 2 diabetes mellitus and hypertension on medications. She came to medicine OPD on 12.05.2023 with complain of pain abdomen with dysuria with hematuria and was advised investigations. Her urine report showed urinary tract*

infection with bacterial infection E.Coli and ultrasound showed Bilateral Pyelonephritis with Intramural Fibroids. She was advised injectable antibiotic as Pyelonephritis (can cause urosepsis leading to septicaemia) to be given at Central Jail. Since her conditions did not improved, she was admitted at Civil hospital female medical Ward Bed No. 4.

She requires regular monitoring with the specialist as she is having Diabetes with hypertension which is a lifelong treatment.

For her Pyelonephritis, she will be staying in the hospital till she is completely cured.

For follow up, since she requires regular monitoring, it may be difficult to have a regular check up from jail.”

6. The learned counsel submits that the applicant is at present still in the Civil Hospital and undergoing her treatment. She submits that since the accused/applicant will be requiring regular monitoring, it will be difficult to have a regular check up from jail and therefore, she may be granted bail so that once she is discharged from the hospital, she will be able to have a regular check up as advised by the Doctor.

7. Mrs. Mary L. Khiangte, learned Additional Public Prosecutor, on the other hand has strongly objected to the release of the applicant on bail considering the nature and quantity of the seized article which was seized from the possession of the applicant. The learned Additional Public Prosecutor points out that nos. 104074 tablets of suspected Methamphetamine was seized from her possession. The learned Additional Public Prosecutor further submits that the prosecution evidence will clearly establish the guilt of the applicant under Section 22(c) of the ND&PS Act and submits that there is no submission made

by the applicant that she is not guilty of the charge under Section 22(c) ND&PS Act.

8. The learned Additional Public Prosecutor also submits that all the medical treatment which is required by the applicant is given to her and it can be seen that she is now admitted in the Civil Hospital for proper treatment. She submits that if found required, this Court may give a direction to the Superintendent, Central Jail to ensure that the applicant once discharged from Central Jail should be sent for regular check up.

9. Having heard the submissions made by the learned counsels for both the parties, this Court has noted that the nature of the offence under which the applicant has been charged is under Section 22(c) ND&PS Act for the alleged possession of nos. 104074 tablets of Methamphetamine. The learned counsel for the applicant has not made any plea that the applicant was innocent of the charge but has simply approached this Court for release of the applicant on humanitarian grounds, stating that the applicant, who is at present undergoing treatment will be requiring regular monitoring which could be difficult if she was kept in Central Jail.

10. This Court, on perusal of the letter dated 18.01.2024 issued by Dr. Lalmuankimi, MD, Consultant, Department of Medicine, Civil Hospital, Aizawl finds that the concerned Doctor has stated that the applicant will be staying in the hospital till she is completely cured for her Pyelonephritis. However, the Doctor has stated that she will be requiring regular check up.

11. Thus, considering the nature of the letter issued by the concerned Doctor

dated 18.01.2024, this Court finds that there is no immediate need for release of the applicant on bail since she is now at present undergoing proper treatment at Civil Hospital, Aizawl. The letter dated 18.01.2024 does not mention that the accused/applicant is not medically fit to be remand back to Central Jail. However, considering the fact that once discharged, the applicant will be requiring regular monitoring, this Court find it fit to direct the Superintendent, Central Jail to ensure that once the applicant is discharged from Civil Hospital on being completely cured for her Pyelonephritis, he should ensure that adequate facilities are given so as to enable the applicant to have regular check up if and when advised by the concerned Doctor. Accordingly, this Court finds that no sufficient grounds have been made for release of the applicant on bail at this stage.

12. Bail Application No. 76/2023 is thus dismissed and disposed of.

JUDGE

Comparing Assistant