GAHC030007622026

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

Case No. : Bail Appln./110/2026

Sh. K.C. Lalrintluanga
S/o K.C. Lalrinmawia, R/o Ramhlun South, Near Ramhlun Indoor Stadium, Aizawl, Mizoram-796007

VERSUS

The State of Mizoram and Anr.
Aizawl2:The Officer-in-Charg

Advocate for the Petitioner : Mr. John Khiangte

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

BEFORE
HONOURABLE MR. JUSTICE NCHUMBEMO MOZHUI
ORDER

27.10.2026

Heard Mr. John Khiangte, learned counsel for the applicant/accused. Also heard Ms. Vanneihsiami, learned Addl. PP for the State.

2. This is an application under Section 483 of the BNSS, 2023, r/w Section 37 of the ND&PS Act, praying for grant of bail to the applicant/accused in connection with Excise & Narcotics Case No. N-169 of 2026 under Section 21(c)

of the ND&PS Act, 1985.

3. The prosecution story in brief is that on 16.06.2026 at 3:00pm, 350 grams of suspected heroin was seized from TATA Intra which was transporting the contraband from Champhai to Aizawl. As per the record of seizure and arrest dated 17.06.2026, at around 6:00 pm, the vehicle was halted on the roadside of Highway No. 6 but found the vehicle to be empty. The I.O on questioning the driver, reveal that he was carrying 2 packets of heroin which were to be delivered to two different people at Aizawl, which was sent to him by one Smt. Mawitei of Champhai and Shri. Mapuia of Khawmawi, Myanmar. As per the record of seizure and arrest, under the supervision of the arresting authority, an arrangement was made by Shri. Vanlallianzauva to meet the receivers which he saved as 'Kca Aizawl' and 'Zuali Aizawl'. The applicant was apprehended when he came to collect the heroin along with one Smt. Lalhmangaihzuali. The vehicle and the suspected person were escorted to Khatla in presence of the Commissionerate of Excise & Narcotics to complete the procedure of search in presence of civil witnesses. Grounds of belief were recorded and the seized contraband were seized at 11:15 pm on 16.06.2026 and formal arrest of the suspected person including the applicant/accused was also made. Moreover, as per report of seizure and arrest, it was shown that Rs. 20,000/- was allegedly recovered from the applicant/accused possession as a transportation fee.

4. Mr. John Khiangte, learned counsel for the applicant/accused submits that the applicant/accused is an innocent person and presently serving as a Middle School Teacher, Department of School Education, Govt. of Mizoram and he does not have any previous criminal record of similar nature, and this is the first time that he has been arrested in connection with a case under the ND&PS Act.

5. The learned counsel for the applicant/accused has further submitted that before arresting the applicant/accused, the arresting authority did not reduce into writing any information regarding the requirement of his arrest, and as such, the arrest procedure was in violation of the provisions of Section 42 of the ND&PS Act, 1985.

6. The learned counsel has further submitted that the applicant/accused was arrested though no illicit article was recovered from his possession. The suspected contraband had been already found by the seizing officer at about 6:00 pm, when the vehicle which was driven by the co-accused namely Shri. Vanlallianzauva, was intercepted as per the report of seizure and arrest dated 17.06.2026. It is further the contention of the learned counsel that the applicant/accused was neither present in the said vehicle nor at a place of interception and recovery. As such, there was no recovery of contraband from his physical possession. The records further reveal that the suspected contrabands had already been intercepted from the vehicle and the presence of the applicant/accused and the proposed delivery of the suspected heroin was after questioning the driver of the vehicle.

7. The learned counsel further submits that before proceeding against the applicant/accused on the basis of such information, the arresting officer has not followed the due process as mandated by Section 42 of ND&PS Act, 1985 by way of reducing the information into writing nor a copy was forwarded to the immediate superior officer. The action of the arresting officer vitiates the mandatory requirement of the provision of law and under such circumstances, the applicant/accused be granted bail.

8. The learned counsel also submits that the implication of the applicant/accused in the said case on the basis of the statement/information by the co-accused cannot be a ground of him being involved in a commission of the offence as alleged as it is a settled law that such statement before the I.O by itself cannot constitute substantive evidence against other accused. In absence of recovery of contraband heroin from his possession, relying on the statement of the co-accused cannot attribute to his involvement in commission of the alleged offence. The learned counsel for the applicant/accused has placed reliance on the judgment and order dated 08.08.2023, passed by this Court in Bail Application No. 28 of 2023, to impress upon this Court that when the arrest violates the provisions of Section 42 of the ND&PS Act, the arrest is vitiated. The applicant/accused would be entitled to the privilege of bail during at least the investigation period. The learned counsel has placed reliance on the following citations:

1. Karnail Singh Vs. State of Haryana, reported in ***(2009) 8 SCC 539***

2. Sarija Band Vs. State, reported in ***(2004) 12 SCC 266.***

9. The learned counsel for the applicant/accused has also relied upon the order dated 13.08.2026 passed in Bail Application No. 72 of 2026 wherein one of the co-accused No. 4, namely, Smt. Ramdinmawii was also granted bail by this Court on the ground of violation of the mandatory provision of Section 42 of ND&PS Act, 1985. Accordingly, he prays for applying the same yardstick in respect of the present applicant/accused.

10. The learned counsel for the applicant/accused further submits that no

contraband article had been recovered from his possession, and he being a permanent resident of Ramhlun South, Aizawl and presently working as Govt. Middle School Teacher under the Office of the Sub-Divisional Education Officer, Aizawl East, Govt. of Mizoram and as such there is no chance of absconding if he is released on bail.

11. Ms. Vanneihsiami, the learned Addl. PP, has, on the other hand, submitted that the applicant/accused has been charged under the provisions of Section 21(c) of the ND&PS Act, which involves a commercial quantity, and therefore, unless this Court is satisfied of the mandatory bar under Section 39 of the ND&PS Act, are satisfied, the applicant/accused ought not be released on bail. The learned Addl. PP has further submitted that the assertion of the applicant/accused, that provisions of Section 42 of the ND&PS Act have been violated in the present case, is without any basis, since at the first instance, the information had been recorded regarding the tracing of a vehicle suspected to be carrying heroin illegally. It is in the course of that investigation that the present applicant/accused has been placed under arrest. The learned Addl. PP has further submitted that in view of the proviso to Section 42, it cannot be said that the arrest of the applicant/accused was vitiated in any manner. She has submitted that therefore, the instant bail petition does not require any further consideration.

12. Heard the learned counsel appearing for the parties, and also perused the materials available on record and the authorities relied upon by the parties.

13. The power under Section 42 relating to entry, search, seizure, and arrest without warrant or authorization has been discussed by the courts of law on

innumerable occasions and therefore does not call for a detailed discussion herein. It is settled that the source of knowledge or belief has to be taken down by the arresting officer concerned or an officer authorized on his behalf in writing, before he makes a search or entry, search, seizure, or arrest without warrant or authorization. The requirement to record the grounds of belief before making such entry and search is mandatory, including the requirement to send a copy of the same within a period of 72 hours to his immediate superior officer.

14. In the present case, from the materials available before this Court, it is noticed that no such knowledge or information about the commission of an offence under the ND&PS Act has been taken down in writing prior to arrest of the applicant/accused. The Constitution Bench of the Apex Court in ***Karnil Singh (supra)*** while considering as to whether Section 42 of the ND&PS Act was mandatory or not, at paragraph 35(d) held as follows:-

> "*35(d) While total non-compliance of requirements of subSections (1) and (2) of Section 42 is impermissible, delayed compliance with satisfactory explanation about the delay will be acceptable compliance of Section 42. To illustrate, if any delay may result in the accused escaping or the goods or evidence being destroyed or removed, not recording in writing the information received, before initiating action, or non-sending a copy of such information to the official superior forthwith, may not be treated as violation of Section 42. But if the information was received when the police officer was in the police station with sufficient time to take action, and if the police officer fails to record in writing the information received, or fails to send a copy thereof, to the official superior, then it will be a suspicious circumstance being a clear violation of Section 42 of the Act. Similarly, where the police officer does not record the information at all, and does not inform the official superior at all, then also it will be a clear violation of Section 42 of the Act. Whether there is adequate or substantial compliance with Section 42 or not is a question of fact to be decided in each case. The*

above position got strengthened with the amendment to Section 42 by Act 9 of 2001."

15. On a perusal of the records available with the case, it is seen that the arresting officer, who was not the investigating officer, had, in the case diary maintained, recorded on 16.06.2026 at around 6:00 pm, she had received a requisition for arrest of the applicant/accused and the arresting officer prepared the seizure memo and memorandum of arrest dated 16.06.2026 was recorded at 11:15 pm. Therefore, it cannot be the case that the arresting authority had little or no time to enter the information received by the arresting authority, more so when it is an ongoing investigation and when the arrest was made several hours after the arresting authority had received the request for his arrest, and the present applicant/accused had allegedly been traced out.

16. Having regard to the mandatory nature of compliance with Section 42 of the ND&PS Act and also having regard to the fact that no recovery of any contraband was made from the applicant/accused at the time of her arrest, in my considered opinion, the applicant/accused is required to be granted the privilege of bail at this stage.

17. Accordingly, the applicant/accused, namely Shri. K.C Lalrintluanga, is directed to be released on bail in connection with Excise Case No. N- 169/2026 on furnishing a bond of Rs 50,000/- with two sureties of the like amount, one of whom shall be a local permanent resident of Aizawl, having his or her own property, and which facts shall also be required to be certified by the Local Council concerned, to the satisfaction of the Learned Jurisdictional Court. The applicant/accused shall participate and cooperate in the investigation, shall not hamper the investigation or tamper with any evidence, and shall appear before

the learned Court and the I.O as and when he is required and called upon to do so. While on bail, the applicant/accused shall not indulge in commission of any offence under the ND&PS Act. Violation of any of the conditions would entail recall of the privilege of bail granted.

18. Nothing in this order shall affect either the investigation or the trial proceedings, if initiated.

19. Bail application is accordingly disposed of.

JUDGE

Comparing Assistant