

GAHC030006622023



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

Case No. : Bail Appln./65/2023

ZD Lalchhuanawma
Lunglei, Mizoram

VERSUS

State of Mizoram
Aizawl, Mizoram

Advocate for the Petitioner : Mr. Jonathan Lalrintluanga

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

BEFORE
HONOURABLE MRS. JUSTICE MARLI VANKUNG
ORDER

Date : 31-01-2024

Heard Mr. Ram Murmu, learned counsel for the applicant/petitioner along with Mrs. Mary L. Khiangte, learned Additional Public Prosecutor for the State respondent.

2. This is an application filed under Section 37 ND&PS Act r/w Section 439 Cr.P.C. for enlargement of the applicant on bail.

3. Mr. Ram Murmu, learned counsel for the applicant/petitioner submits that the applicant/petitioner had previously applied for bail before this Court which

was however, rejected vide Order dated 22.09.2023 in Bail Application No. 38/2023. The learned counsel submits that the petitioner has approached this Court again for release on bail on the grounds that the petitioner is suffering from several ailments and that he may be granted bail on medical grounds. The learned counsel submits that he was taken for medical check-up from jail on several occasions and on 03.10.2023, the Medical Officer, Central Jail wrote a letter stating that the petitioner is a patient of COPD (Chronic Obstructive Pulmonary disease). The Medical Officer advised the petitioner to go for regular check-up to a Specialist for his medical condition. The learned counsel also submits that the petitioner was again brought for medical treatment on 23.11.2023 on account of his cough, fever and dizziness. The learned counsel has enclosed the medical documents to support his submissions.

4. The learned counsel further submits that the petitioner was wrongly implicated for the seizure of 501 grams of suspected Heroin on 14.01.2023. That there is non-compliance of Section 42(1), 42(2), 52-A and other mandatory provisions of the ND&PS Act. He submits that charge sheet has been submitted and a case is at its trial stage, where PW-1 has given his evidence and the remaining 8 PWs are yet to depose before the Court. He therefore prays that since the petitioner is innocent of the offence under Section 21(c) of the ND&PS Act, 1985 and was arrested on 14.01.2023 and has been in judicial custody since then, he may be granted bail due to his health conditions.

5. Mrs. Mary L. Khiangte, learned Additional Public Prosecutor, on the other hand has strongly objected submitting that the prosecution evidence will be able to establish the guilt of the petitioner under Section 21(c) of the ND&PS Act,

1985. She further submits that the nature of illness suffered by the petitioner is not life threatening, as can be seen from the medical report dated 23.11.2023 which states that the petitioner is suffering from cough, fever and dizziness. The learned Additional Public Prosecutor submits that the petitioner can be given proper treatment for such type of illness, even while he is kept in jail, since the Jail Doctor has not made any mention of his requirement to be treated outside jail. She further submits that this Court in its Order dated 22.09.2023 in Bail Application No. 38/2023 has thoroughly dealt with the issues where there is non-compliance of Section 42(1), 42(2), 52-A and the other mandatory provisions of the ND&PS Act. No new grounds have been made out except for the release of the petitioner on bail on medical grounds.

6. Having heard the submissions made by both the rival parties, this Court finds that on perusal of the medical documents enclosed wherein the medical document issued by the Medical Officer, Central Jail dated 03.10.2023 has observed that the petitioner is a patient of COPD. He was referred to Casualty, Civil Hospital, Aizawl on 29.08.2023 with symptoms of high fever, shortness of breath. He is advised to go for regular check-up at the Specialist for his COPD. Later on 23.11.2023, an Out Patient Card is issued wherein the petitioner was prescribed some medicines for cough, fever and dizziness.

7. From the medical documents produced, it does not appear *prima facie* that the applicant/petitioner is suffering from any life threatening illness which has made him not fit to be kept in Central Jail. Also, considering the nature of offence wherein he has been charged under Section 21(c) ND&PS Act for the alleged possession of 501 grams of suspected Heroin. It is seen that if found

guilty and convicted under Section 21(c) ND&PS Act, the punishment is with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years and shall also be liable to fine which shall not be less than one lakh rupees but which may extend to two lakh rupees, this Court finds that no sufficient grounds have been made out for granting bail to the applicant/petitioner at this stage, considering the fact that charge sheet has already been filed and the case is at its trial stage.

8. This Court however, finds it appropriate to direct the learned Trial Court to dispose of the instant case registered as Criminal Trial No. 1187/2023 expeditiously. Accordingly, Bail Application No. 65/2023 stands dismissed and disposed of.

JUDGE

Comparing Assistant