

IN THE HIGH COURT OF MANIPUR AT IMPHAL

BAIL. APPLN. No. 8 of 2023

Samurailatpam Rojina Devi (39) yrs w/o (L) Gotimayum Priyokumar Sharma, Kakching Samak Leikai, Ward No. – II, P.O. & P.S. Kakching, District – Kakching, at present Universal Pharma, Lamphel Sana Keithel Near AG Colony Imphal West- 795004.

... Petitioner

- Versus -

The Officer-in-charge, Lamphel Police Station, Imphal West District, Manipur, P.O. & P.S. Lamphel, PIN- 795004.

... Respondent

BEFORE

HON'BLE MR. JUSTICE A. GUNESHWAR SHARMA

For the petitioner	:	Mr. P. Tomcha, Advocate
For the respondent	:	Mr. H. Samarjit, P.P.
Date of Hearing	:	08.06.2023
Date of Judgment & Order	:	13.06.2023

JUDGMENT & ORDER (CAV)

[1] Heard Mr. P. Tomcha, learned counsel for the petitioner; and Mr. H. Samarjit, learned PP for the State.

[2] The petitioner approached this Court under the provisions of Section 439 Cr.P.C. praying to release her on bail in connection with F.I.R. No. 60 (03) 2023 Lamphel P.S. U/S 21(c)/29 ND & PS Act. In the F.I.R., she is accused No. 2 and one Md. Riyajuddin is accused No. 1. Her earlier bail application being Cril.Misc.(B) Case No. 97 of 2023 was rejected by learned Judge, Special Court (ND & PS), Manipur, vide order dated 06.04.2023 on the ground that the investigation is at the initial stage.

[3] Brief facts of the present case is that the petitioner is a widow and her husband died on 11.12.2021 leaving behind her and a minor son aged about 9 years. The husband of the petitioner was running the business of selling/stocking/exhibit for sale, or distribute of medicines as Proprietor of M/S Universal Pharmacy and accused No. 1 is the assistant/manager/caretaker of the pharmacy. After the death of her husband, the proprietorship of the pharmacy was changed in the name of the petitioner and M/S Universal Pharmacy continued its business from the month of August, 2022 with accused No. 1 as its manager/caretaker. On 30.03.2023, the police allegedly recovered 921(nine hundred and twenty one) bottles of cough syrup from the medical store and accused No. 1 and later on, the petitioner was arrested. As per the license issued by the competent authority (Annexure A/3) in the name of the petitioner (accused No. 2), it is valid from 01.01.2023 to 31.12.2027. As per the Notification dated 24.10.2018 issued by the Joint Secretary (Health & FW), Government of Manipur, an authorized stockists/distributors at Imphal shall not stock more than 500 bottles of cough syrup containing codeine or its salts and retailers shall not possess more than 20 bottles at any point of time. The police report mentioned that the accused No. 1 brought the recovered cough syrup and kept them concealed

in the medical store to sell to the willing customers illegally. It is stated that both the accused are in the trade of illegal selling of cough syrup to the unauthorized customers for the last ten years. By the common impugned order dated 06.04.2023 in Cril.Misc.(B) Case No. 96 & 97 of 2023, filed by the accused Nos. 1 & 2, the learned Judge, Special Court (ND & PS), Manipur, rejected both the bail applications preferred by the two accused on the ground that person who are found in bulk possession of manufactured drugs without any valid authorization can be tried under the ND&PS Act, 1985 apart from the Drugs and Cosmetics Act, 1940. Relying on the decision of the Hon'ble Supreme Court in the case of **State of Punjab Vs Rakesh Kumar (2019) 2 SCC 466** to the effect that person who are found in bulk possession of manufactured drugs without any valid authorization can be tried under the ND&PS Act, 1985 apart from the Drugs and Cosmetics Act, 1940; the Special Court rejected the bail applications as the investigation was at the initial stage.

[4] Mr. P. Tomcha, learned counsel for the petitioner has submitted that both the accused persons were arrested on 29.03.2023 and were produced before the learned Duty Magistrate, Imphal West, on 30.03.2023 for police remand of 8(eight) days and the accused were remanded to police custody till 06.04.2023 for further investigation. In the remand prayer, it is stated that 6 cartoon boxes containing 921 (nine hundred and twenty one) bottles of codeine based cough syrup bottle labelled as 'DELT' each bottle containing 10 mg of codeine phosphate were recovered from the possession of the accused No. 1, Md. Riyajuddin. On examination, accused No. 1 stated that the cough syrup bottles were brought by him and kept concealed in the medical store to sell to the willing customers illegally and it is also stated that both the

accused were in the business of illegal selling of the cough syrup to the unauthorized customers for the last 10 years. In the remand application, it is stated that accused No. 1 joined as a salesman in the Universal Pharmacy in the month of June, 2013 owned by the husband of petitioner/accused No. 2 herein and the shop was located at a rented house at Lamphel Sanakeithel. Accused No. 1 used to give Rs. 13,000/- (Thirteen thousand) to petitioner/accused No. 2 herein for her family expenditure and some time she used to come to the pharmacy but most of the time, accused No. 1 deal and run the pharmacy and all the monetary transaction and procurement was done by him. Three more salesmen are also working as the staff. In the remand application, it is stated that from the very beginning accused No. 1 was looking after the business of the pharmacy and after the death of her husband, accused No. 1 has been dealing the business including monetary transaction and procurement of items and she is given monetary aid of Rs. 13,000/- (Thirteen thousand) from the store for her maintenance.

[5] Mr. P. Tomcha, learned counsel for the petitioner has stated that the petitioner/accused No. 2 has no role in the running of the business and the pharmacy is solely managed by accused No. 1 including monetary transactions and procurement of the items and she gets a monthly monetary aid of Rs. 13,000/- (Rupees thirteen thousand) from accused No. 1 for her maintenance. It is also stated that the petitioner has a minor son and due to her detention, her son has difficulty in attending school and day- to-day affairs. Mr. P. Tomcha, learned counsel also submits that the FIR was registered against the present petitioner/accused No. 2 without any material and she has been falsely implicated. It is also stated that she is not involved in any offence

punishable under ND & PS Act and at most the provisions of Drugs and Cosmetic Act, 1940 and it will be attracted. The learned Special Judge has rejected the bail application on the ground that investigation was at the initial stage and not on merit and the decision of Hon'ble Supreme Court in **State of Punjab Vs Rakesh Kumar (Supra)** is not applicable in the present case. Mr. P. Tomcha, learned counsel has also stated that as per the license issued by the competent authority (Annexure A/3) and as per the notification dated 20.10.2018 (Annexure A/4), the pharmacy registered in the name of the petitioner/accused No. 2 is legally authorized to have a stock of 500 bottles of cough syrup and the excess is only for 421 bottles. Since 10 mg. of codeine is present in 5 ml, each bottle of 100 ml contains 20g and hence excess 421 bottles contain 842 gm. of codeine. It is pointed out that as per Notification Specifying Small Quantity & Commercial Quantity at Serial No. 28, Small Quantity is 10 gm. and Commercial Quantity is 1kg. Mr. P. Tomcha, learned counsel has stated that 842 gm. is an intermediate quantity and even if it is assumed that the provisions of ND & PS Act is attracted, the applicable offence would be under Section 21 (b) ND & PS for which the maximum period of imprisonment is up to 10 years. It is also stated that the petitioner is not involved in any other criminal activity on earlier occasion except for implication in the present case. It is further submitted that considering all the relevant facts of the case, i.e., running of the pharmacy by accused No. 1 alone, non-incriminating materials against the present petitioner/accused No. 2, and the minor son without any parental protection, it is prayed that the petitioner may be released on bail on such condition as may be imposed by this Court.

[6] Mr. H. Samrjit, learned PP for the State, submits that as per the investigation it is found that accused No. 1 and the petitioner/accused No. 2 were involved in the illegal activities of selling of cough syrup to unauthorized person for the last 10 years. Moreover, the pharmacy is also registered in her name and she cannot escape from the liability. It is also evident that M/S Universal Pharma has been selling codeine-based cough syrup to local young boys as well as to many adult drug users to collect money for wrongful gain. Learned PP has also submitted that the investigation is at initial stage and releasing the accused at this stage will likely influence important witnesses and tamper with evidence and prayed that the bail application may be rejected.

[7] This Court considered the materials on record and submissions made at the bar. It is seen that the accused No. 1 has been running the pharmacy which was earlier registered in the name of the husband of the petitioner/accused No. 2 since 2013. After the death of the husband of the petitioner due to covid, license was issued in the name of the petitioner in the year 2022 and the same is valid from 01.01.2023 to 31.12.2027. License is issued in the name of the petitioner herein as stockiest under the provisions of Drugs and Cosmetics Act, 1940 and Rules. It is also stated that the petitioner is not involved in any other criminal activity on earlier occasion except for the present case. It is also seen from the Notification dated 20.10.2018 issued by the competent authority that stockists/distributors at Imphal can store up to 500 bottles of codeine based cough syrup. From the available record, it is seen that accused No. 1 gave a sum of Rs. 13,000/- (Thirteen thousand) per month to the petitioner/accused No. 2 for her family maintenance and the affairs of the financial transactions and

procurement of medicine is done solely by accused No. 1 and the petitioner/accused No. 2 apparently has no active role in the management of the M/S Universal Pharma. Her name is involved, as license of M/S Universal Pharma is issued in her name. Even if, assuming that the provisions of ND & PS Act is attracted to the petitioner/accused No. 2, the unauthorized excess amount of codeine is 842 gm. which is intermediate quantity. Besides the petitioner/accused No. 2 has a minor child who is studying at class 5 and he is without love and affection of parents. Considering all these factors into account, this Court is of the opinion that further custody of the petitioner may not be necessary.

[8] The petitioner/accused No. 2 Smt. Samurailatpam Rojina Devi, is to be released on bail on personal bond of Rs. 1,00,000/- (rupees one lakh) with a surety (government employee) of like amount to the satisfaction of learned Judge, Special Court (ND&PS), Manipur, with the conditions that:

- (a) The petitioner shall furnish personal bond of Rs. 1,00,000/- (Rupees one lakh) with one surety (government employee) of the like amount.
- (b) The petitioner shall co-operate with the investigation.
- (c) The petitioner shall not tamper with the evidence or influence witnesses.
- (d) The petitioner shall not leave Manipur without permission of Ld. Judge, Special Court (ND & PS), Manipur.
- (e) The petitioner is directed to appear before the learned Judge, Special Court (ND & PS), Manipur, on 1st & 15th of every month till submission of report under Section 173 Cr.P.C. If 1st and 15th of the month happen to be a holiday, the petitioner shall appear before the Court on the next working day.

- (f) On breach of any of the aforesaid conditions, the respondent is entitled to take appropriate action against the petitioner in accordance with law.

[9] With these observations, the bail application is disposed of. No costs.

[10] Send a copy of this order to learned Judge, Special Court (ND&PS), Manipur, for information.

JUDGE

FR/NFR

Indrajeet