

IN THE HIGH COURT OF MANIPUR AT IMPHAL

BAIL. APPLN. No. 13 of 2023

Bogimayum Riyajuddin, aged about 43 years, S/o Md. Joinullabuddin, a resident of Hatta Minuthong, P.O. & P.S. Imphal East District, Imphal East District, Manipur – 795005.

... Petitioner

- Versus -

The Officer-in-charge, Lamphel Police Station having its Office at Lamphel, P.O. & P.S. Lamphel, Imphal West District, Manipur- 795004.

... Respondent

B E F O R E

HON'BLE MR. JUSTICE A. GUNESHWAR SHARMA

For the petitioner	:	Mr. N. Jotendro, Sr. Advocate
For the respondent	:	Mr. Y. Ashang, P.P.
Date of Hearing	:	08.08.2023
Date of Judgment & Order	:	22.09.2023

JUDGMENT & ORDER (CAV)

[1] Heard Mr. N. Jotendro, learned senior counsel, assisted by Mr. Murtaza Ahmed, learned counsel for the petitioner; and Mr. Y. Ashang, learned PP for the State respondent.

[2] The petitioner approached this Court under the provisions of Section 439 Cr.P.C. praying to release him on bail in connection with F.I.R. No. 60 (03) 2023 LPS U/S 21(c)/29 ND & PS Act. In the F.I.R., he is accused No. 1 and one Shamurailatpam Rojina Devi is accused No. 2. His earlier bail applications being Cril.Misc.(B) Case No. 96 of 2023 and Cril. Misc. (B) Case No. 101 of 2023 were rejected vide order dated 06.04.2023 and 02.05.2023 respectively on the ground that the investigation is at the initial stage.

[3] Brief facts of the present case is that the husband of the accused No. 2 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 accused No. 2 husband, the proprietorship of the pharmacy was changed in the name of the accused No. 2 and M/S Universal Pharmacy continued its business from the month of August, 2022 with accused No. 1(present petitioner) 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(present petitioner) and later on, the accused No. 2 was arrested. As per the license issued by the competent authority 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. N. Jotendro, learned senior counsel, submits that the petitioner is a mere salesman of the Universal Pharmacy and he has no role and he is sole earning member of his family and due to long detention in custody, his family is facing problems. He points out that the co-accused, who is the owner of the pharmacy has already been released by this Court vide order dated 13.06.2023. Learned senior counsel further submits that the petitioner is also having health issues and necessary documents have been submitted by the Jail Authority. Since, there is no further progress in the investigation and all the necessary seizures have already been made by the police, further detention of the petitioner is not required and prays that the petitioner be released on bail and will abide by any conditions imposed by this Court.

[5] Mr. Y. Ashang, learned PP, submits that the petitioner is the main accused in the present case and it has already been observed by this Court in the order dated 13.06.2023. Since, the present offence relates to the business in Narcotic Drugs and Psychotropic Substances and is a crime against the society at large, he prays that the bail application be rejected.

[6] This Court considered the rival submissions made at the Bar. The petitioner was arrested on 29.03.2023. It is an admitted fact that all the seizures and the recovery have been completed and no new documents or articles are to be seized from the petitioner. The petitioner is in jail for almost 6(six) months and co-accused has also been released. In the circumstances, the bail application is allowed.

[7] The petitioner/accused No. 1 Bogimayum Riyajuddin, 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.

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

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

JUDGE

FR/NFR

Indrajeet