

IN THE HIGH COURT OF MANIPUR

AT IMPHAL

Bail Appln. No. 18 of 2023

P. Makusingpu Kabui, aged about 34 years, S/o (L) Elaizao,
resident of Keikhu Kabui Village, P.O. Porompat and P.S.
Irilbung, Imphal East District, Manipur

..... Petitioner/s

- Versus -

Officer-in-Charge of Narcotics Affairs & Borders, Manipur,
having its Office at Jail Road (Opposite Central Jail), P.O. &
P.S. Imphal, Imphal West District, Manipur, Pin-795001.

.....Respondent/s

B E F O R E

HON'BLE MR. JUSTICE A. GUNESHWAR SHARMA

For the Applicant	::	Mr. N. Ibotombi, Sr. Adv. assisted by Mr. A. Rommel, Adv.
For the respondents	::	Mr. H. Samarjit, PP
Date of hearing	::	01.08.2023
Date of Order	::	08.08.2023

ORDER (CAV)

[1] The petitioner is a police constable in the Manipur Police Department and he was enrolled in the bar and started practicing as a lawyer before joining the police service. At the relevant time, he was posted at Hengbung Police Outpost under Senapati Police Station. As he was an advocate prior to joining service, he was utilized as a Literate Constable for

writing reports and maintaining records and he was not usually engaged in the normal police duties such as frisking, road opening and patrolling etc., and mostly confined in office.

[2] On 11.04.2023, an FIR was registered by Senapati Police Station being FIR No. 8(4) 2023 SPT PS U/S 21(c)/60(3) NDPS Act, 1985 and Section 384 IPC against 3 (three) individuals who were trying to traffic contraband brown sugar and 2 (two) VDF personnel of the Hengbung Police Outpost on the allegations that the two VDF personnel extorted a sum of Rs. 1,00,000/- (Rupees one lakh) and snatched 79 (seventy nine) soap cases of contraband brown sugar. The 3 (three) accused persons are (i) Lalpu Singsit, 34 years, S/o Sathang Singsit of Gangjang village, P.O. & P.S. Manja, Karbi Anglong, Assam; (ii) Haogin Lhengum, 20 years, S/o Johny Lhangum of Chonjang Village, P.O. & P.S.- Manja, Karbi Anglong, Assam; and (iii) Robert Lenthang, 24 years, S/o Jangkam Lenthang of Thingpijang Village, P.S.- Dhansiri, P.O. Hidipi, Karbi Anglong, Assam and the 2 (two) VDF personnel of Hengbung Outpost are (i) H. Solomon, S/o Hingba Dhansiri, VDF No. 10046; and (ii) Mohan Kumar Bista, S/o Man Bahadur Bista VDF No. 10370. They were arrested in connection with the said FIR. In the evening of 14.04.2023 at around 10:00 p.m., the petitioner along with two other police personnel namely Constable (1) Md. Mustaqim No. 0901881 and (2) Seba Kumar VDF No. 10631 were also arrested on the alleged statement of the above two arrested VDF personnel that the two police personnel were involved in the concealment of the 79 soap cases suspected to be brown sugar which the said two VDF personnel

allegedly snatched from the 3 (three) drug traffickers/accused persons. The petitioner and the other accused persons were remanded to judicial custody. The 2 (two) police personnel, who were arrested along with the petitioner in connection with the same FIR were enlarged on bail by the Ld. Special Judge (ND & PS), Senapati vide order dated 26.04.2023 passed in Cril.Mmisc.(Bail) Case No. 42 of 2023 and Cril.Misc.(Bail) Case No. 45 of 2023 with the observation that they were just performing their duties at sentry itself as told by their seniors and had no nexus with the commission of offence. However, the Ld. Special Judge (ND & PS), Senapati rejected the bail application of the petitioner herein vide order dated 19.06.2023 in Cril.Misc.(Bail) Case No. 50 of 2023 only on the ground that the investigation is at initial stage and co-accused are yet to be arrested.

[3] Heard Mr. N. Ibotombi, learned senior counsel assisted by Mr. A. Rommel, learned counsel for the petitioner and Mr. H. Samarjit, learned PP for the State respondent.

[4] Mr. N. Ibotombi, learned senior counsel for the petitioner, submits that the Ld. Special Judge has not treated equally all the accused persons who are similarly situated in the same yardstick and other accused persons were released in the month of April, 2023 on the ground that they were performing their duties on the instruction of the commanding officer and their involvement can be ascertained during the trial. But in the case of the petitioner herein, in an order passed in June, 2023, the Ld. Special Court did not consider the above observations and held that the investigation was at initial stage and the co-accused were yet to be

arrested. Learned senior counsel draws the attention of this Court that the reasoning of the Ld. Special Judge is inconsistent and does not reflect the correct factual matrix. The Ld. Special Judge held in June, 2023 that the trial is at initial stage even after 2 (two) months and wrongly observed that the co-accused persons are yet to be arrested. In fact, the 3 (three) co-accused persons, who are similarly situated with the petitioner herein, were released in the month of April, 2023 and all other co-accused were also arrested. So, the reasons given for rejecting the bail is not cogent and the petitioner also deserves the same. Learned senior counsel also appraises this Court that 2 (two) more accused (i.e. Mr. H. Solomon and Ms. K. Athini) were also released on 04.07.2023 in Cril.Misc.Bail Case No. 51 of 2023 and on 05.07.2023 in Cril.Misc.(Bail) Case No. 55 of 2023 on interim bail on medical ground. He submits that there is no reason for keeping the present petitioner on bail.

[5] Mr. N. Ibotombi, learned senior counsel for the petitioner, draws the attention of this Court to the contents of para 8, 9, 10 and 11 of the counter affidavit filed by the State Government and it is ample clear that the present petitioner has the same role as Seva Kumar, who has already been released on bail by the Ld. Special Judge (ND & PS). Accordingly, it is prayed that the accused be released on bail on parity as granted to other co-accused with similar role. It is further stated that the petitioner will be abide by all the conditions imposed by this Court.

[6] Mr. H. Samarjit, learned PP for the State respondent, submits that during investigation, it is revealed that the petitioner is involved in

checking the vehicle at Henbung Outpost even though his duty has assigned as Literate Constable in office. This shows that he is involvement in the matter and the Trial Court has rightly rejected his bail application.

[7] This Court has considered the rival submissions and perused the materials on record.

[8] It is seen that in case of the other accused released on bail in the month of April, 2023, the Ld. Special Judge held that the other accused police/VDF personnel were performing their duties as instructed by the Superior Officer and their involvement could be ascertained only during the trial. But in the case of the present petitioner, it is held that the investigation is at initial stage even in the month of June, 2023 and the co-accused are yet to be arrested. Both these grounds are fallacious and inconsistent. In the moth of April, 2023, 3 (three) co-accused were released but in the month of June, 2023, it has been observed that the investigation is at initial stage. The observation of co-accused, who are yet to be arrested, is not supported by the materials on record as atleast 6 (six) accused persons were arrested. From the counter affidavit of the State also, it is clear that the role of the petitioner and Seva Kumar are same. The earlier bail orders have not been challenged by the State till date and have attained finality. Subsequently, 2 (two) more co-accused are also released on July, 2023 on interim bail.

[9] Considering all these facts, this Court is of the considered view that the petitioner is also entitled on bail on the same conditions as imposed by the Ld. Special Judge to the other accused, i.e. the petitioner is

released on bail subject to the satisfaction of the Ld. Special Judge (ND & PS), Senapati on the following conditions that the accused persons shall:

- (i) Furnish a P.R. Bond of Rs. 2,00,000/- (Rupees two lakh) only;
- (ii) Furnish two local sureties of Rs. 2,00,000/- only of the like amount, who are State/Central Govt. Employee;
- (iii) not to tamper evidence;
- (iv) not to intimidate witnesses and
- (v) not to leave the State of Manipur without prior permission of the trial Court.

[10] With this observation, bail application is allowed.

[11] Send a copy of this order to the Ld. Special Judge (ND & PS) for information and for doing the needful.

JUDGE

FR/NFR

joshua

KH. JOSHUA
MARING
Digitally signed by KH.
JOSHUA MARING
Date: 2023.08.08
11:10:26 +05'30'