

**IN THE HIGH COURT OF MANIPUR
AT IMPHAL**

BAIL APPLN. No. 28 of 2023

1. Mr. Milan Ali, aged about 41 years, S/o Saban Ali of Karai Kheti Bazar Barpeta, Assam, at present residence of Dungrei Hundung, Ukhrul, P.O. & P.S. Ukhrul, Ukhrul District, Manipur.
2. Mr. Sanju Choudhury, aged about 38 years, S/o Ajit Choudhury of Masjit Gali, P.O.- Noonmati, P.S. Chandamari – Guwahati, Assam, at present Dungrei Hundung, Ukhrul P.O. & P.S. Ukhrul District, Manipur.

... Petitioners/Accused

- Versus -

Officer-in-Charge, Shangshak Police Station, Ukhrul District, Manipur.

B E F O R E
HON'BLE MRS. JUSTICE GOLMEI GAIPHULSHILLU

07.12.2023

[1] Heard Mr. R.S. Reisang, learned senior counsel assisted by Mr. Lungmi Ragui, learned counsel appearing for the petitioners and Mr. H. Samarjit, learned PP appearing for the State respondent.

[2] The present application has been filed under Section 439 of Cr.P.C. read with Section 37 of the N.D. & P.S. Act praying for grant of bail to the accused person under the following prayer:

- "(i) To admit the bail application;
- (ii) Call for the records of the case;

- (iii) After hearing the parties, pass an order for releasing the present accused/petitioners on bail for the ends of justice;*
- (iv) Pass any appropriate order as the Hon'ble High Court may deem fit and proper in the facts and circumstances of the case."*

[3] The grounds praying for releasing the petitioners/accused are as follows:

- (i) For that, there is no prima facie case has been made out by the I.O. of the case against the present petitioner.*
- (ii) For that, the accused drivers were into police custody w.e.f. 04.08.2023 to 10.08.2023 and from 11.08.2023 to 25.08.2023 they were remanded to judicial custody. In the interrogation of the accused, during the police custody as well as judicial custody nothing has been shown and proved that the drivers are involved in the crime.*
- (iii) For that, as per report of the I.O. it is stated that the drivers denied the involvement of the crime. Moreover, from CDR/SDR of phone numbers seized by the I.O., it can be easily detected in order to find out concrete evidence in the present case. On further investigation on the accused during judicial custody no subsequent materials and concrete evidence has been found till date for accusation of the two present petitioners/accused.*
- (iv) For that, charges levelled against the two drivers are not attracted against the drivers since they never committed any crime nor attempted to commit any crime punishable under Section 21(c)/29/60/(3) ND&Ps Act & 34 IPC at any point of time. Hence, the drivers are falsely implicated in the present case.*
- (v) For that, the two drivers have never been arrested earlier or convicted by the Court in respect of cognizable offences. The petitioner is honest citizen and as such he has never indulged in any illegal activities nor likely to involve the future.*
- (vi) For that, the mandatory provision of Section 42 and of the ND & PS Act has not been complied with the personnel of Assam Rifles at the time of arrest and seizure of the contraband Brown Sugar."*

[3] During the course of the hearing, the learned PP has drawn the attention of this Court to the paragraph Nos. 4, 5, 6 & 7 of the counter affidavit which are reproduced as follows:

4. That, on 07/08/2023 (Monday) weighing and extraction of sample of the seized brown sugar was conducted in the presence of and at the residence of Hon'ble CJM/Ukl at Imphal. During the preparation of the weighing memo the seized brown sugar weighs 500 gms including the weight of each 39 plastic packets.

During the course of the investigation the three arrested accused persons were thoroughly interrogated at JIC, Imphal. Finger prints of the three accused persons were recorded at Finger Print Bureau, Imphal.

Photograph of the three accused persons were taken at CID (Tech) office, Imphal.

During the interrogation, the two accused persons namely,

- 1. Mr. Milan Ali (41) S/o Shaban Ali and*
- 2. Mr. Sanju Choudhary (38) S/o Ajit Choudhary*

who were the Truck Driver and 2nd driver of the seized truck denied their involvement in the crime. Both of them states that, they have no eye witness but they presumed the drugs has been kept secretly by Mr. Asebe Dime (41) @ Mataimi, S/o N. Jailang of Saijang, Zalukey Nagaland and his associate secretly. They only came to know that there was drug carrying in their TATA vehicle truck only after they were caught and recovered the drug by the 24th Assam Rifle at Gamnon check post, Ukhrul district.

5. That, the accused Asebe Dime (41) @ Mataimi states that, he is originally from Vahong village, Jessami, Ukhrul. He married to a Nagaland woman in the year 2001 and got settled in Saijang, Peren district in Nagaland since then, He also states that the other two accused persons met him at Nampisha village for the first time. The seized TATA vehicle Truck was hired by him (Asebe Dime) from the owner namely Lalbabu Kumar (34) S/o Jhagaru Chaudhary of Muzaffarpur District, Bihar, A/P Awontang, Ukhrul for transporting 12(twelve) buffaloes from Nampisha village, Kamjong district to Dimapur, Nagaland via Ukhrul. Asebe Dime @ Mataimi was already at Nampisha village, Kamjong district since 03/08/2023. The truck driver and 2nd driver Mr. Milan Ali and Sanju Choudhary arrived from Ukhrul on 04/08/2023 for picking up the buffaloes.

6. That, Accused Asebe Dime (41) @ Mataimi also states that when he was procuring the buffaloes at Aungzia village, Myanmar, one Myanmar national (name unknown) about 50 (fifty years of age) approached to him and requested him to transport 39 (thirty nine) soap cases of brown sugar (Heroine) from Aungzia village to Dimapur, Nagaland. Accused Asebe Dime @ Mataimi also states that the person assured him to pay Rs. 15,000/- as transportation charge when he reach Dimapur. Asebe Dime agreed to transport the said drug. The Myanmar national peon took his phone number and told him he will be contacted when he reach Dimapur. And he (Myanmar national) also provided him one unknown youth (Myanmar) to assist him in transporting the 12 (twelve) buffaloes on foot from Aungzia village, Myanmar to Nampisha village, Kamjong district, Manipur.

7. That on 04/08/2023 at about 11:00 am the buffaloes were loaded to the seized truck at Nampisha village. The accused Asebe Dime @ Mataimi, states that while he was loading the buffaloes to the truck, the unknown youth provided by the owner of the brown sugar (Heroine) to assist him that he has loaded/kept the brown sugar the Cap of the truck.

The same day i.e. 04/08/2023 at about 05:00 pm, the three of them (the three accused) were detained and arrested by 24 Assam Rifle at Gamnom Check Post for recovering illegal drug (brown sugar) from their TATA truck. The three accused persons were remanded to judicial custody on 11/08/2023 for 15 (fifteen) days i.e., w.e.f. 11/08/2023 to till 25/08/2023 by Hon'ble Special Judge ND&PS, Ukhrul.

The seized TATA vehicle truck has been released on zima bond on 16/09/2023 to the petitioner/owner of the truck by the Hon'ble Special Judge, ND&PS, Ukhul

CDR/SDR of phone numbers of some suspected numbers from the accused persons are being analysed but has not so far made out a concrete evidence of the involvement of the two accused persons noted below. On further investigation of the case, no subsequent materials has been found out till date for accusation of the present two accused and there is no remark for previous illegal transportation of such drugs by the present two accused."

[4] After hearing both the learned counsel for the parties at length and after perusal of the application with the affidavit-in-opposition with the reproduced herein above filed by State respondent, it is clear that the present petitioners/accused are not at all taking part in the above mentioned transaction and without their knowledge.

[5] In the result, the accused/petitioners are released on bail in connection with F.I.R. Case No. 03 (08) 2023, Shangshak P.S. U/S 21(c)/29/60(3) ND & PS Act & 34 IPC on their furnishing a sum of Rs. 1,00,000/- (Rupees one lakh) each of surety and like amount of PR Bond to the satisfaction of the concerned Court i.e. Court of Special Judge (ND & PS), Ukhul with direction that the petitioners/accused should cooperate with the investigation of case as and when required to appear before the I.O. of the case and further, directed not to leave the State of Manipur without prior permission from the concerned Court aforementioned.

[6] An extract copy of this order be furnished to the Court of Special Judge (ND & PS), Ukhul for necessary compliance. Copy of this order also be furnished to the learned counsel appearing for both the parties.

[7] Accordingly, bail application is disposed of.

JUDGE

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