

**IN THE HIGH COURT OF MANIPUR
AT IMPHAL****MC(Cril.A)No.21 of 2022**

The Narcotics Control Bureau(NCB) represented by its Intelligence Officer, Imphal Sub Zone, Changangei Ucheckon, Airport Road, PO & PS Lamphel, Imphal West District, Manipur-795004.

...Applicant**– Versus –**

Mr. Ayub Khan aged about 53 years, S/o Md. Kayamuddin resident of Kiyamgei Awang Leikai, PO & PS Irilbung, Imphal East, Manipur.

.... Respondent.

BEFORE

HON'BLE THE ACTING CHIEF JUSTICE MR. M.V. MURALIDARAN

For the Applicant	:	Mr. W. Darakishwor, Sr. PCCG.
For the Respondent	:	Mr. MD. Jalaluddin, Sr. Adv.
Date of reserved.	:	27.09.2023
Date of Judgment & Order	:	05.10.2023.

JUDGMENT & ORDER
(CAV)

[1] Heard Mr. W. Darakishwor, learned Special Public Prosecutor for the petitioner and Mr. MD. Jalaluddin learned senior counsel for the respondent.

[2] This petition has been filed by the petitioner under Section 378(4) of the Code of Criminal Procedure, 1973 to grant special leave to file an appeal against the judgment and order dated 4.7.2022 passed in Special Trial Case No.160 of 2014 on the file of the learned Special Judge (ND&PS), Manipur at Lamphelpat.

[3] Mr. W. Darakishwor, the learned Special Public Prosecutor for the petitioner submitted that there are sufficient grounds which indicate that the judgment passed by the learned Special Judge (ND&PS), Manipur is contrary to the established principles of law and, as such, this is a fit case where this Court may grant special leave to prefer the appeal. If the special leave to file the appeal is not granted the petitioner, the petitioner would put to irreparable loss and injury. Thus, a prayer has been made to grant special leave to file the appeal against the judgment and order of the learned Special Judge (ND&PS) passed in Special Trial Case No.160 of 2014 dated 4.7.2022.

[4] Per contra, Mr. MD Jalaluddin, the learned senior counsel for the respondent submitted that the investigation of Narcotics Control Bureau (NCB) against the respondent has no connection with the respondent. No reasonable grounds have been made out to grant leave for filing appeal under Section 378(4) Cr.P.C. He would submit that the acquittal made by the learned Special Judge is based on the evidences of the prosecution as well as non-authorisation of the Central Industrial Security Force (CISF) personnel under the ND & PS Act, 1985. If the permission for appeal is granted, it will

affect the interest of the respondent and also the ends of justice will be defeated. Thus, a prayer has been made to dismiss the petition.

[5] This Court considered the rival submissions and also perused the materials available on record.

[6] The petitioner, Narcotics Control Bureau, has filed the present petition for grant of special leave to file the appeal against the judgment and order dated 4.7.2022 made in Special Trial Case No.160 of 2014 by the Special Judge (ND&PS), Lamphelpat, thereby acquitting the respondent from the offence charged in the case of illegal possession of 5711 tablets of WY (Methamphetamine) on 20.3.2012 at the Imphal Airport.

[7] The brief facts of the prosecution case are that on 20.3.2012, based on a tip off from a secret intelligence received from CISF at Imphal Airport that a person was putting some suspected package inside his baggage after completion of X-Ray Screening of registered baggage. The said person is Md. Ayub Khan (accused/respondent), who was to board the Air India Flight No.724 to Kolkata. Immediately search was done as per law under the ND & PS Act in which 1 mobile, 1 Card of Haj Committee, Air India Ticket bearing No.0982103136428C1 were seized from the accused. The systematic search of the brown baggage being Tag No.A1 311449/0098311449 along with the team of the NCB results led to the seizure of suspected tablets which were packed in 30 polythene bags and the said polythene bags contained pink,

green and red coloured tablets in two packages. On interrogation, the respondent admitted that he concealed the drugs to avoid detection.

[8] Further case of the prosecution is that a small quantity was taken out and tested with the help of Standard Field Testing kit which gave positive result for Ampohetamine/Methamphetamine, a psychotropic substance. To confirm, again a small quantity was tested with IONSCAN MODEL : 500DT/S/N: 50635 in the presence of the CISF officer of Airport, which also gave positive result for the said psychotropic substance. Totally 30 small packets containing 5711 tablets which is 542 gms. were seized after following procedures and the sample was sent to the Laboratory. The accused was examined under Section 67 of the ND & PS Act and the accused admitted that he was carrying the Methamphetamine tablets for monetary profit by selling it in illegal market. Finding sufficient evidence, the complainant submitted complaint against the accused for the offence under Sections 8(c)/21/22/23/28/29/30/35/60 of the Act.

[9] On 12.11.2014, the Court took cognizance of the offence under Section 21(c) of the Act. After hearing the parties, on 10.2.2016, the Special Court framed charge against the accused under Section 21(c).

[10] On side of prosecution, 13 witnesses were examined and 38 documents were marked. The prosecution also marked 13 material objects in support of its case. The accused has not produced any evidence. After completion of evidence, the Special Court examined under Section 313

Cr.P.C., wherein the accused denied the charges and evidences of the prosecution witnesses.

[11] Upon consideration of the oral and documentary evidence, the Special Court came to the conclusion that the prosecution has failed to prove with sufficient lawful evidences in respect of the charge against the accused of illegal possession of 5711 tablets of WY (Methamphetamine) in 30 small blue packets wrapped in 2 packages inside a polythene bag in his baggage at the Imphal Airport on 20.3.2012 beyond reasonable doubt as required by law and, accordingly, the accused is entitled to the benefit of doubts. Aggrieved by the acquittal, the petitioner has filed the appeal.

[12] Section 378(4) Cr.P.C. reads as under:

"4. If such an order of acquittal is passed in any case instituted upon complaint and the High Court, on an application made to it by the complainant in this behalf, grants special leave to appeal from the order of acquittal, the complainant may present such an appeal to the High Court."

[13] Once it is a case instituted on a complaint and an order of acquittal is passed, whether offence be bailable or non-bailable cognizable or non-cognizable, the complainant can file an application under Section 378(4) for special leave to appeal against it in the High Court. Thus, Section 378(4) Cr.P.C. places no restriction on the complainant.

[14] The argument canvassed by the learned Special Public Prosecutor for the petitioner/appellant appears to be well founded.

[15] Considering the submissions of the learned counsel appearing on either side and having gone through the impugned judgment of acquittal, *prima facie*, the Court finds that an arguable case is made out for consideration of the appeal by the petitioner. Hence, the present petition is liable to be allowed and leave to appeal, as prayed for, is to be granted.

[16] In the result, MC (CrI.A) No.21 of 2022 is allowed. The special leave to appeal is granted to the petitioner for filing the appeal against the impugned judgment dated 4.7.2022 in Special Trial Case No.160 of 2014 on the file of the learned Special Judge (ND&PS), Manipur at Lamphelpat.

[17] Registry is directed to number the appeal if it is otherwise in order, post for motion on 09.10.2023.

ACTING CHIEF JUSTICE

FR/NFR

John Kom