

Serial No. 01
Supplementary List

HIGH COURT OF MEGHALAYA
AT SHILLONG

BA. No. 2 of 2023

Date of Decision: 22.02.2023

Shri Thanglalpaul Khongsai

Vs.

State of Meghalaya

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioner/Appellant(s)

Mr. M.F. Quereshi, Adv.

Ms. K. Chisa, Adv.

For the Respondent(s)

Mr. R. Gurung, GA.

Mr. S. Sengupta, Addl. PP.

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| i) | Whether approved for reporting in
Law journals etc.: | Yes/No |
| ii) | Whether approved for publication
in press: | Yes/No |

ORDER (ORAL)

1. This matter relates to a case under the Narcotic Drugs and Psychotropic Substances Act (NDPS), 1985 which was registered as Special (NDPS) Case No. 6 of 2022 before the learned Special Judge, Khliehriat, East Jaintia Hills District.

2. The prosecution's story of the case is that on 12.04.2022 on receipt of credible information from the Additional Superintendent of Police, Khliehriat, one vehicle being a Mahindra Bolero bearing Registration No. NL 04 C-3516 was suspected to be carrying contraband. The said vehicle was proceeding from Silchar Assam side towards Shillong. The police accordingly intercepted the vehicle at about 7:00 pm at Khliehriat wherein there were three occupants namely; (1) Shri Francis Lunk Haokip, s/o Shri Thangkhomang Haokip (2) Shri Chonminlen Touthang, s/o Chongpu Touthang and (3) Smti Nengboi Haokip, w/o Shri Chonminlen Touthang.

3. After observing all the legal formalities, the said vehicle was searched following which the police found about 51(fifty one) Nos. of soap cases containing yellowish/orange powder suspected to be heroin concealed inside the chassis of the vehicle. The suspected contraband was weighed and measured and found to be 411.71 grams. Accordingly, the vehicle was seized and the three occupants were thereafter detained and arrested after a formal FIR was filed by the complainant, Sub-Inspector D.D. Warjri of Ladrymbai, Police Outpost, leading to the registration of Khliehriat PS Case No. 42(04)2022 under Section 8(c)/22(c)/27A of the NDPS Act.

4. As pointed out, the Investigating Officer (I/O) has examined all the relevant witnesses and in course of questioning, one of the accused person Shri Chonminlen Touthang revealed that, he along with one Shri Thangtinlun Khongsai, were involved in the operation when they bought the consignment from Mohreh after which Shri Thangtinlun Khongsai left

Manipur for Shillong with the arrangement that he will receive the consignment at Shillong. On the basis of this revelation, the I/O caused arrest of the Shri Thangtinlun Khongsai.

5. After the investigation is completed, the I/O filed his Final Form Report under Section 173 Cr.PC and has returned a finding to the extent that a prima facie case is found well established against the accused; (1) Shri Francis Haokip, (2) Shri Chonminlen Touthang and (3) Shri Thangtinlun Khongsai, under Section 8(c)/22(c)/27A NDPS Act. The other accused person Smti Nengboi Haokip was discharged on the ground of insufficient evidence against her.

6. One of the accused person, Shri Thangtinlun Khongsai has now approached this Court with an application under Section 37 of the NDPS Act, r/w Section 439 Cr.PC for grant of bail through the petitioner herein who is said to be a relative of the accused.

7. Heard Mr. M.F. Quereshi, learned counsel for the petitioner who has submitted that the accused person is innocent and not at all involved with the alleged offence since he was nowhere in the scene when the said vehicle was intercepted and also when the said alleged contraband goods were seized from the said vehicle and as such, presumption for possession of illicit articles as per Section 54 of the NDPS Act cannot be attributed to the accused person.

8. The only allegation levelled against the accused person Shri Thangtinlun Khongsai is that he was involved in financing the illegal

transaction for which he is liable under Section 27A of the said Act, however, the I/O has come to this conclusion only on the basis of the alleged confession of the co-accused and also presumably on the basis of Call Details Report (CDR) of the mobile phone numbers belonging to the accused Shri Chonminlen Touthang and the accused Shri Francis Lunk Haokip and that of the abovementioned accused person. Otherwise, there is no shred of evidence to link the accused person with the case of the prosecution.

9. The learned counsel has however submitted that the accused person does not deny that he is acquainted with the accused Shri Chonminlen Touthang as they know each other, but the conversation between them over the mobile phone is only for exchange of pleasantries.

10. In this respect, the learned counsel for the petitioner has submitted that in a number of decisions by the Apex Court as well as High Courts of this country, it has been held that a confessional statement of a co-accused cannot be used or relied upon to affect conviction of another co-accused since under Section 67 of the NDPS Act, placed in juxtaposition with Section 25 of the Evidence Act, statement made to a police officer is not admissible in evidence.

11. In support of his case, the learned counsel has cited the following decisions: -

(i) Tofan Singh v. State of Tamil Nadu; (2021) 4 SCC 1, para 155.156 & 157.

(ii) Sujit Tiwari v. State of Gujarat & Anr.; AIR 2020 SC 667, para 11.

(iii) State by (NCB) Bengaluru v. Pallulabid Ahmad Arimutta & Anr.; Order dated 10.01.2022 of the Supreme Court in Petition for Special Leave to Appeal (CRL) No. 242 of 2022.

(iv) Amit Ranjan v. Narcotics Control Bureau, Delhi; Order dated 23.05.2022 of the Delhi High Court in Bail Appln. No. 1189/2020.

(v) Jitendra Bhati v. Narcotics Control Bureau; Order dated 18.03.2021 of the Delhi High Court in Bail Appln. No. 4005/2020.

(vi) Phundreimayum Yas Khan v. State (GNCT of Delhi); Order dated 11.01.2023 of the Delhi High Court in Bail Appln. No. 1383/2022.

12. Per contra, Mr. R. Gurung, learned GA for the State respondent has submitted that the I/O in the charge sheet has made a detailed report on the role of the accused person, who is directly involved in the case inasmuch as, he had bought the contraband goods from Myanmar together with the main accused person Shri Chonminlen Touthang and this too is not the first time that such a transaction took place and has arranged for their meeting at Shillong for sale or distribution of the said contraband goods. Since the complicity of the accused person Shri Thangtinlun Khongsai in the case has been fully established, it is submitted that bail at this juncture may not be granted.

13. The learned counsel has also conceded that the impact of the *Tofan Singh* case as far as admissibility of confession or statement under Section

67 of the NDPS Act is concerned cannot be refuted. To this extent, the admission of the co-accused Shri Chonminlen Touthang as regard the involvement of the accused person Shri Thangtinlun Khongsai in the case has to be proved during the trial.

14. However, the learned GA has impressed upon this Court the importance of the provision of Section 37 of the NDPS Act and has submitted that the provision provides that bail can be granted to an accused charged for offences under the NDPS Act only if the court is satisfied that there are reasonable grounds for believing that the accused is not guilty of such offence and secondly, that he is not likely to commit any offence while on bail.

15. What are reasonable grounds, according to the learned GA has been the subject matter of a number of decisions passed by the Apex Court as well as High Courts and in a recent judgment on this issue, the Hon'ble Supreme Court in the case of *Narcotics Control Bureau v. Mohit Aggarwal*; 2022 SCC Online SC 891, at paras 12, 13 & 14 has held as follows: -

“12.The expression “reasonable grounds” has come up for discussion in several rulings of this Court. In “Collector of Customs, New Delhi v. Ahmadalieva Nodira”⁵, a decision rendered by a Three Judges Bench of this Court, it has been held thus :-

“7. The limitations on granting of bail come in only when the question of granting bail arises on merits. Apart from the grant of opportunity to the Public Prosecutor, the other twin conditions which really have relevance so far as the present accused-respondent is concerned, are:

the satisfaction of the court that there are reasonable grounds for believing that the accused is not guilty of the alleged offence and that he is not likely to commit any offence while on bail. The conditions are cumulative and not alternative. The satisfaction contemplated regarding the accused being not guilty has to be based on reasonable grounds. The expression “reasonable grounds” means something more than prima facie grounds. It contemplates substantial probable causes for believing that the accused is not guilty of the alleged offence. The reasonable belief contemplated in the provision requires existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence.” [emphasis added]

13. The expression “reasonable ground” came up for discussion in “State of Kerala and others v. Rajesh ” 6 and this Court has observed as below:

“20. The expression “reasonable grounds” means something more than prima facie grounds. It contemplates substantial probable causes for believing that the accused is not guilty of the alleged offence. The reasonable belief contemplated in the provision requires existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence. In the case on hand, the High Court seems to have completely overlooked the underlying object of Section 37 that in addition to the limitations provided under the CrPC, or any other law for the time being in force, regulating the grant of bail, its liberal approach in the matter of bail under the NDPS Act is indeed uncalled for.”

14. To sum up, the expression “reasonable grounds” used in clause (b) of Sub-Section (1) of Section 37 would mean credible, plausible and grounds for the Court to believe that the accused person is not guilty of the alleged offence. For arriving at any such conclusion, such facts and circumstances must exist in a case that can persuade the Court to believe that the accused person would not have committed such an offence. Dove-tailed with the aforesaid satisfaction is an additional consideration that the accused person is unlikely to commit any offence while on bail.”

16. On the basis of the CDR of the mobile numbers of the accused and the co-accused, it has been proved that there is a nexus between the accused person and the co-accused and the proximity cannot be denied and as such, this can be a reasonable ground to believe that the accused person is guilty of the offence alleged.

17. Mr. Quereshi, in response to the submission made by the learned GA has submitted that, apart from the concession as regard the applicability of the ratio of the *Tofan Singh* judgment in the case of the accused person herein, in one of the case cited by the petitioner that is, ***State by (NCB) Bengaluru v. Pallulabid Ahmad Arimutta & Anr.***, the Hon’ble Supreme Court at para 10 has clearly observed that the CDR details of some of the accused or the allegations of tampering of evidence on the part of one of the respondents is an aspect that will be examined at the stage of trial, but that will not affect the bail already granted to the accused person therein.

18. It is therefore prayed that bail may be granted to the accused person on any condition that this Court may deem fit and proper to impose.

19. Having heard the parties, this Court at the outset would observe that the case involving the aforementioned accused person Shri Thangtinlun Khongsai and the co-accused Shri Chonminlen Touthang, after investigation is completed has resulted in the charge sheet being filed with a prayer to send the said accused persons to stand trial before the court of competent jurisdiction and accordingly, a regular case being Special (NDPS) Case No. 6 of 2022 was registered. Therefore, even though there is no hard and fast rule that prayer for bail cannot be moved after the charge sheet is filed, the matter however has to be decided looking into the merits of the charges levelled.

20. It is also noticed that this instant application was filed seeking grant of bail under Section 37 of the NDPS Act read with Section 439 Cr.P.C. Needless to say, it is well settled that the power of the Court to grant bail to a person accused of having committed an offence under the NDPS Act, particularly, for offences under sections 19, 24, 27A and those involving commercial quantity, sub-clause (ii) of clause (b) of sub-section 1 of section 37 would circumscribe the twin conditions required to be fulfilled, Viz; (i) the satisfaction of the court that there are reasonable grounds for believing that the accused is not guilty of the alleged offence; and (ii) that he is not likely to commit any offence while on bail. The satisfaction contemplated regarding the accused being not guilty has to be based on reasonable grounds based on existence of facts and circumstances of the case.

21. The Apex Court while expressing concern on the menace and impact of narcotic drugs in contemporary society vis-a- vis the issue of grant or refusal of bail under Section 37 of the Act has vividly observed as such in the case of *State of Kerala & Anr v. Rajesh & Ors* ;(2020) 12 SCC 122, *at paras 18 and 19* which reads as follows:-

“18. This Court has laid down broad parameters to be followed while considering the application for bail moved by the accused involved in offences under NDPS Act. In Union of India v. Ram Samujh, it has been elaborated as under:-

“7. It is to be borne in mind that the aforesaid legislative mandate is required to be adhered to and followed. It should be borne in mind that in a murder case, the accused commits murder of one or two persons, while those persons who are dealing in narcotic drugs are instrumental in causing death or in inflicting death-blow to a number of innocent young victims, who are vulnerable; it causes deleterious effects and a deadly impact on the society; they are a hazard to the society; even if they are released temporarily, in all probability, they would continue their nefarious activities of trafficking and/or dealing in intoxicants clandestinely. Reason may be large stake and illegal profit involved. This Court, dealing with the contention with regard to punishment under the NDPS Act, has succinctly observed about the adverse effect of such activities in Durand Didier v. State (UT of Goa) as under: (SCC p. 104, para 24).

24. With deep concern, we may point out that the organised activities of the underworld and the clandestine smuggling of narcotic drugs and psychotropic substances into this country and illegal trafficking in such

drugs and substances have led to drug addiction among a sizeable section of the public, particularly the adolescents and students of both sexes and the menace has assumed serious and alarming proportions in the recent years. Therefore, in order to effectively control and eradicate this proliferating and booming devastating menace, causing deleterious effects and deadly impact on the society as a whole, Parliament in its wisdom, has made effective provisions by introducing this Act 81 of 1985 specifying mandatory minimum imprisonment and fine.

8. To check the menace of dangerous drugs flooding the market, Parliament has provided that the person accused of offences under the NDPS Act should not be released on bail during trial unless the mandatory conditions provided in Section 37, namely,

(i) there are reasonable grounds for believing that the accused is not guilty of such offence; and

(ii) that he is not likely to commit any offence while on bail are satisfied. The High Court has not given any justifiable reason for not abiding by the aforesaid mandate while ordering the release of the respondent accused on bail. Instead of attempting to take a holistic view of the harmful socio-economic consequences and health hazards which would accompany trafficking illegally in dangerous drugs, the court should implement the law in the spirit with which Parliament, after due deliberation, has amended.”

19. The scheme of Section 37 reveals that the exercise of power to grant bail is not only subject to the limitations contained under Section 439 of the CrPC, but is also subject to the limitation placed by Section 37 which commences with nonobstante clause. The operative part of the said section is in the negative form prescribing the enlargement of bail to

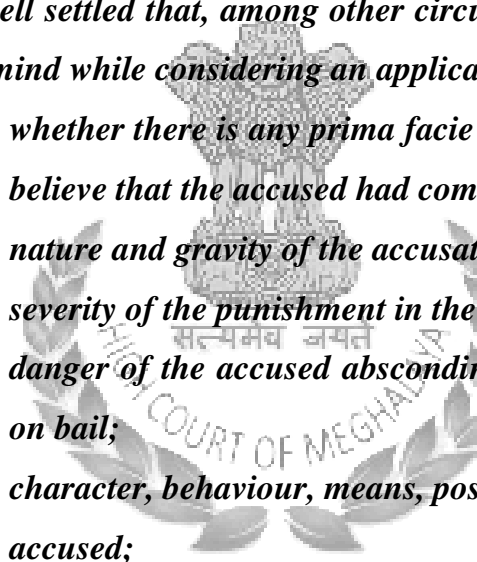
any person accused of commission of an offence under the Act, unless twin conditions are satisfied. The first condition is that the prosecution must be given an opportunity to oppose the application; and the second, is that the court must be satisfied that there are reasonable grounds for believing that he is not guilty of such offence. If either of these two conditions is not satisfied, the ban for granting bail operates.”

22. In the opinion of this Court, even if the petitioner is able to substantiate his stand that the admission of the co-accused cannot be utilized to implicate or to convict the accused person Shri Thangtinlun Khongsai, the fact that this accused person has admitted that he knows the co-accused Shri Chonminlen Touthang and that there used to be contacts between them through mobile phone, would suffice as a piece of circumstantial evidence to link the said accused person to the offence alleged, though that would only come out during the trial. However, a prima facie apprehension that the accused person is involved in the commitment of the offence is reasonable ground for this Court to believe that he is not guilty of such offence, until proven otherwise.

23. The principle of bail jurisprudence would demand that bail is the rule and jail an exception, however, it is also equally true that grant or refusal of bail is a discretionary power vested on the competent courts and each case will depend on the particular and peculiar facts and circumstances, upon which the court will eventually decide the issue. Generally, what is well settled as has been laid down in a catena of decisions by the Apex Court is that there are certain factors to be considered relevant to the grant or refusal of bail.

24. In this regard, the Hon'ble Supreme Court in the case of ***Prasanta Kumar Sarkar v. Ashis Chatterjee & Anr.***; (2010) 14 SCC 496, at para 9 has held as follows:-

“9. ... It is trite that this Court does not, normally, interfere with an order passed by the High Court granting or rejecting bail to the accused. However, it is equally incumbent upon the High Court to exercise its discretion judiciously, cautiously and strictly in compliance with the basic principles laid down in a plethora of decisions of this Court on the point. It is well settled that, among other circumstances, the factors to be borne in mind while considering an application for bail are:

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- (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;*
 - (ii) nature and gravity of the accusation;*
 - (iii) severity of the punishment in the event of conviction;*
 - (iv) danger of the accused absconding or fleeing, if released on bail;*
 - (v) character, behaviour, means, position and standing of the accused;*
 - (vi) likelihood of the offence being repeated;*
 - (vii) reasonable apprehension of the witnesses being influenced; and*
 - (viii) danger, of course, of justice being thwarted by grant of bail...”*

25. In view of the nature and gravity of the accusation, the severity of the punishment and the likelihood of the offence being repeated which would be a threat to a large number of innocent lives and society as a whole,

this Court is convinced that a case for grant of bail as prayed for has not been made out.

26. On consideration of the observations made above, this Court is of the firm view that this petition is devoid of merits and the same is accordingly rejected.

27. Registry to send back the case record.

28. Petition disposed of. No costs.

Judge

Meghalaya
22.02.2023
"N. Swer, Stenographer"

