

Serial No. 02 & 03
Supplementary List

HIGH COURT OF MEGHALAYA
AT SHILLONG

AB. No. 5 of 2023 with
AB. No. 6 of 2023

Date of Decision: 31.03.2023

Shri Bijoy Saha	Vs.	State of Meghalaya
Shri Om Prakash Tanwar	Vs.	State of Meghalaya

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioner/Appellant(s)	:	Dr. N. Mozika, Sr. Adv. with Mr. M.L. Nongpiur, Adv.
For the Respondent(s)	:	Mr. R. Gurung, GA and Ms. A. Thungwa, GA.

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

COMMON ORDER

1. An FIR dated 02.03.2023 was filed before the Officer-In-Charge Baghmara, Police Station South Garo Hills by Sub-Inspector A. Wahlang, with the information that that on 01.03.2023 at around 9:54 PM, on receipt of confidential information, one Bolero pickup truck No. AS25 EC 4493 was intercepted and on being searched, underneath grocery items which

were loaded on the said pickup truck, alleged contraband substance was recovered from the storage compartment of the said vehicle being 1393 bottles of Phensedyl weighing 139.3 kg and 2864 strips of Tapentadol tablets weighing 2864 grams which were seized. The occupants of the vehicle by the name of Dilbar Ali and his helper Monowar Ali were detained in this regard. In course of enquiry it was revealed that, the said consignment was meant to be delivered to one Subash Barman who was also detained. All the three suspects were arrested.

2. On receipt of the said FIR, a cognizance case was registered being Baghmara PS Case No. 9(3)2023 under Section 21(c)/25/29 NDPS Act. The investigation was accordingly launched.

3. The petitioner Shri Bijoy Saha in AB. No. 5 of 2023 and the petitioner Shri Om Prakash Tanwar in AB. No. 6 of 2023 have separately approached this Court with an application under Section 438 Cr.PC praying for grant of pre-arrest bail in connection with the said Baghmara PS Case No. 9(3)2023.

4. These two petitions pertains to the same FIR and the same criminal case, therefore, it is found expedient that a common order be passed.

5. Heard Dr. N. Mozika, learned Sr. Counsel who has submitted that the petitioner Shri Bijoy Saha is a business man engaged in selling wholesale grocery items at Krishnai, Golpara District, Assam. In course of his business, the petitioner purchased bulk quantities of drinking water, nimbupani and fresh mango juice from M/s B.N. Choudhury & Sons and

M/s Hanuman Store for delivery to Smti Sillarin D. Shira of Rongra village, Baghmara. The said items were transported from Krishnai to Baghmara in the said bolero pickup No. AS25 EC 4493.

6. This petitioner was however surprised to learn that the police from Krishnai Police Station went to his residence on 03.03.2023 and again on 05.03.2023 with the intention to arrest him, however, the petitioner was not present at his residence at the relevant time.

7. On enquiry, the petitioner came to know that the case being Baghmara PS Case No. 9(3)2023 was registered and he was impleaded in the case as one of the suspects. Immediately on 14.03.2023, the petitioner had approached the Special Court (NDPS) at Baghmara with a prayer for grant of pre-arrest bail, upon which, pending final decision of the same, he was granted interim bail. During the intervening period, the petitioner had appeared before the I/O and his statement was duly recorded. However, the said pre-arrest bail application was dismissed by the learned Spl. Judge NDPS on 21.03.2023, hence this application.

8. The learned Sr. counsel has further submitted that the petitioner is nowhere involved in the case since he is a businessman who has transacted his business in grocery items and is not connected or has no knowledge of what has been allegedly done by the driver or the helper of the said Bolero pickup. Since the police had come looking for him, the petitioner being apprehensive of imminent arrest in connection with the aforementioned case has therefore approached this Court with a prayer for grant of pre-arrest bail with any condition that may be imposed by this Court.

9. Coming to the case of the petitioner Shri Om Prakash Tanwar, the learned Sr. counsel has submitted that the petitioner is the registered owner of the said Bolero pickup No. AS25 EC 4493 and is also a businessman by profession. He has rented out the vehicle to Shri Dilbar Ali, the driver and as such, has no knowledge or control on the use of the said vehicle.

10. This petitioner was however surprised to know that the police from Krishnai PS had come to his residence looking for him on 03.03.2023 and 05.03.2023. Later on, on enquiry, the petitioner came to know of the said criminal case being Baghmara PS Case No. 09(03)2023 and that his vehicle was seized in connection herewith.

11. The petitioner then approached the Special Court (NDPS) at Baghmara with a prayer for grant of pre-arrest bail, upon which, pending final decision of the same, he was granted interim bail. During the intervening period, the petitioner had appeared before the I/O and his statement was duly recorded. However, the said pre-arrest bail application was dismissed by the learned Spl. Judge NDPS on 21.03.2023, hence this application.

12. The learned Sr. counsel has submitted that generally, the two petitioners herein were neither named in the FIR nor their involvement with the suspected transport of the alleged contraband goods have been established. Therefore, no nexus can be linked between the petitioners and the accused driver and helper and as such, there is no reason to apprehend the petitioners as far as the case is concerned.

13. Even otherwise, the learned Sr. counsel has submitted that the alleged contraband seized being Phensedyl and Tapentadol tablets does not figure in the list of psychotropic substances detailed in the Schedule to the NDPS Act, 1985, accordingly, there could be no case made out under the NDPS Act.

14. The petitioners being justified in their apprehension of imminent arrest, they may be enlarged on bail if arrested with any conditions to be imposed by this Court as deemed fit and proper and the interim bail granted may be made absolute it is finally submitted.

15. Per contra, Mr. R. Gurung, learned GA has opposed the prayer made by the petitioners and has submitted that the contraband seized, irrespective of the name that they carry contained a psychotropic substance called '*Codeine*' which may contain 0.75 mg in one bottle of Phensedyl, however if taken cumulatively, the amount of seizure made in this case would exceed 0.75 mg or rather falls within the scope of commercial quantity.

16. Another argument advanced by the learned GA is that preliminary investigation has revealed that the petitioners herein are in constant touch and contact with the arrested accused person Dilbar Ali and Subash Barman. The Call Details Record (CDR) of the communication between the petitioners and the said accused person have also been collected and compiled by the I/O which clearly shows a link and nexus between them.

17. In view of the seriousness of the offence and the provision of Section 37 of the NDPS Act, the learned GA has submitted that the prayer of the

petitioners may not be allowed.

18. The submission of the parties have been duly considered and the petition as well as the contents of the case diary have been perused by this Court. The fact that the case has been registered with one of the Sections being Section 21(c), which section provides a punishment for contravention of any provision of the Act in relation to manufactured drugs and preparations, encompassing a wide arc to include possession, sale, purchase, transport, import and export or use of such manufactured drugs, Sub-Section (c) qualifying the said contravention involving commercial quantity, attracts the provision of Sub-Section (b) of Section 37 of the said Act as far as grant or refusal of bail is concerned.

19. Coming to Section 37, a number of judicial pronouncement in this regard has been rendered by the Apex Court as well as the High Court and the approach to bail is always in the negative which is opposite to the oft repeated principle of '*bail and not jail*' since the provision starts with a non-obstante clause.

20. It is well settled that for granting bail under Section 37, the court must be satisfied on the basis of the record produced before it that there are reasonable grounds for believing that the accused is not guilty of the offences for which he is charged with and that if enlarged on bail he is not likely to commit the same offence. The conditions for grant of bail under Section 37 are in addition to the limitations provided under the Code of Criminal Procedure regulating grant of bail.

21. This means that apart from what is generally taken into account while considering grant or refusal of bail, that is the seriousness and gravity of the offence alleged, the fact that the accused if enlarged on bail may abscond or tamper with the evidence etc, in Section 37, the standard prescribed for grant of bail is “*reasonable grounds to believe*” that the person is not guilty of the offence. The expression ‘*reasonable grounds*’ means something more than ‘*prima facie grounds*’. Plainly understood, it means in accordance with reasons.

22. In the case of the petitioners herein, at this stage this Court, mostly based on the findings as regard the CDR has reasonable grounds to believe that the petitioners are guilty of the offence alleged, subject to evidence in due course.

23. This being the case, the consideration for grant of pre-arrest bail does not subsist. Accordingly, both these petitions are dismissed as devoid of merits.

24. The interim bail granted is discharged.

25. Let the case diary be returned.

26. Petition disposed of. No costs.

Judge

Meghalaya

31.03.2023

“N. Swer, Stenographer”