

**Serial No. 03**  
**Supplementary List**

**HIGH COURT OF MEGHALAYA**  
**AT SHILLONG**

BA No. 14 of 2023

Date of Decision: 27.06.2023

Shri. Lalrintluanga Sailo

Vs.

State of Meghalaya & Anr.

**Coram:**

**Hon'ble Mr. Justice W. Diengdoh, Judge**

**Appearance:**

For the Petitioner/Appellant(s) : Shri. K.Ch. Gautam, Adv.

For the Respondent(s) : Mr. N.D. Chullai, AAG with  
Mr. A.H. Kharwanlang, Addl. Sr. GA  
Mr. J.N. Rynjah, GA  
Mr. S. Sengupta, Addl. Sr. GA

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

**ORDER (ORAL)**

1. This is an application preferred under Section 439 Cr.P.C read with Section 37 of the Narcotic Drugs and Psychotropic Substances (NDPS) Act, 1985.

2. Heard Mr. K.Ch. Gautam learned counsel for the applicant who has submitted that Smti X [name withheld as she is an HIV positive patient and as provided under Section 34(I)(a) of The Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome (Prevention and Control) Act, 2017] was arrested on 16.03.2023 from her residence at Demthring, Shillong in connection with Khliehriat P.S. Case No. 22(3)2023 under Section 21(b)/29 NDPS Act.

3. It is submitted that on 16.03.2023 on receipt of information by the police at Khliehriat, East Jaintia Hills that a person travelling in a vehicle was in possession of drugs, random checking of vehicles was conducted and, in the process, one vehicle being tourist Tata Sumo No. ML-05K-2432 was intercepted and on search being conducted one black backpack belonging to Smti. Lalduhwami Ralte was found to contain five plastic soap boxes containing yellowish colour powder which, on preliminary test being made gave a positive result for heroin. The quantity later seized was found to be 55.68 gms.

4. Smti. Lalduhwami Ralte was arrested in such connection and on her admission that she was directed to bring the said consignment to Shillong by Smti X, the police accordingly arrested the said Smti X.

5. While Smti X was in custody, the Investigating Officer filed the chargesheet on 09.05.2023 finding that a prima facie case is found well established under Section 21(b)/29 NDPS Act against both the accused persons therein, including Smti X. The case was placed before the court of the learned Special Judge (NDPS) at Khliehriat, East Jaintia Hills for trial.

6. The learned counsel has, however, submitted that the said chargesheet was not the complete chargesheet since in the same report, the I/O had stated that some samples were sent for forensic testing at the FSL, Shillong and the report of the same is still awaited and upon receipt of such report, a supplementary chargesheet will be submitted.

7. The learned counsel has also submitted that Smti X has preferred an application for grant of bail before the court of the learned Special Judge (NDPS) at Khliehriat, East Jaintia Hills but the same was rejected vide order dated 17.05.2023. Hence this application.

8. The learned counsel for the applicant has submitted that this bail application is pressed mainly on three grounds, Viz:

- i. That since the charge-sheet is not a complete charge-sheet, therefore, the accused having been in custody for more than the stipulated period of 60 days, she is therefore entitled to be enlarged

on default bail under Section 167(2) Cr.P.C.

ii. That there is no evidence to link the accused with the alleged offence as the seizure of the alleged contraband substances was made at Khliehriat, while she was at Shillong at the relevant point of time and further that the statement of a co-accused cannot be used against another co-accused.

iii. That the accused is an HIV positive patient and requires specialized medical treatment, for which the same could only be able to be given to her if she is enlarged on bail.

9. On the first ground the learned counsel has submitted that more often than not, especially in NDPS cases the I/O would file a chargesheet, however with a prayer to file a supplementary chargesheet upon receipt of the FSL report, presumably the report as regard the composition of the substance sent for forensic test.

10. In such a situation, when the complete chargesheet has not yet been filed, the rights of the accused person, particularly as far as entitlement to default bail is concerned, is scuttled by the prosecution. In this regard, the observation of the Hon'ble Supreme Court at para 34 in the case of Ritu Chhabaria v. Union of India & Ors.: 2023 SCC Online SC 502 has been

referred to, wherein the Court, vide order dated 26.04.2023 has observed that “In the instant case, it is clear from the facts that during the pendency of the investigation, supplementary chargesheets were filed by the Investigating Agency just before the expiry of 60 days, with the purpose of scuttling the right to default bail accrued in favour of the accused....”

11. The learned counsel has, however, submitted that the said order dated 26.04.2023(supra) has been sought to be recalled and the Hon’ble Supreme Court taking note of this in the case of Divyas Bardewa v. Narcotics Control Bureau vide order dated 01.05.2023 in Special Leave to Appeal (Crl.) No(s). 11628/2022, has observed that the issue of filing of chargesheet without the FSL report is pending consideration and as such, the matter is finally to be decided. However, it is submitted that a three-judge bench of the Hon’ble Supreme Court in the case of Directorate of Enforcement v. Manpreet Singh Talwar has held that “...we clarify that the order shall not preclude any trial court or, as the case may be, High Court from considering an application for the grant of default bail under Section 167 of the Code of Criminal Procedure 1973 independent of and without relying on the judgment dated 26 April 2023 in Writ Petition (Criminal) No 60 of 2023.”

12. On the second ground, the learned counsel has submitted that on merits, what is apparent is that the accused in question herein was not in conscious

possession of the alleged narcotics substances and is nowhere connected with the case, therefore, as in a similarly situated case wherein this Court has allowed the accused therein to be enlarged on bail, the prayer of the applicant in this case may also be allowed, with any conditions to be imposed.

13. The third ground urged is that the accused is an HIV positive patient and requires not only medical attention but psychological support and on this premise, she may be enlarged on bail to allow her to get the best treatment she could afford.

14. Per contra, Mr. N.D. Chullai, learned AAG while opposing the submission of the learned counsel for the petitioner has submitted that the plea of default bail in favour of the accused cannot be considered as there is no prayer for the same under Section 167 Cr.PC, even before the trial court, the bail application referred to as a consequent of which the order dated 17.05.2023 was passed rejecting the prayer made, was also not filed under Section 167 Cr.PC therefore, the applicant cannot raise this issue at this point of time.

15. The learned AAG has then referred to the case of Anwar Alam v. State of Sikkim, wherein vide order dated 29.11.2022, the Hon'ble Sikkim High Court while discussing the issue of grant of default bail since the prosecution

has failed to file the complete chargesheet, has referred to the case of Mohd. Arbaz v. State of NCT of Delhi and has observed that since the issue of an incomplete chargesheet being filed without filing the report of the chemical analysis would entitle the accused to go on default bail is pending consideration before the Hon'ble Supreme Court, the Court would not decide on this issue. The resultant outcome is that the bail petition was rejected even as the chargesheet was filed within the statutory period, but without the FSL Report.

16. Reference was also made to the case of Mr. Sayyad Mohammad @ Nasim v. State of Karnataka & Anr. wherein vide order dated 29.03.2022, the Hon'ble Karnataka High Court dealing with a similar case, has after a lengthy discussion on the issue, held that "...the petitioner does not get a right to demand for enlargement on the ground of default bail under Section 167(2) of the Cr.P.C. merely because the charge sheet/final report filed by the Police after investigation is without FSL report..." Other cases which deal with the issue of default bail vis-à-vis the filing of incomplete chargesheet was also referred to, which may not be necessary to be discussed herein as they cover the same field.

17. To counter the argument of the applicant that since the alleged contraband substances was not recovered from the possession of the accused

for which bail is sought for, therefore she could not have been detained in custody on this ground, the learned AAG has submitted that the police have credible information that there have been constant touch and conversation between the accused referred to herein and the other co-accused and as such, the issue of conscious possession cannot be ruled out in this case. The case of Union of India (through Narcotics Control Bureau, Lucknow) v. MD. Nawaz Khan: (2021) 10 SCC 100, paras 22, 25 and 34.2 was cited to support this contention.

18. In response to the contention raised by the State respondent that the accused ought to have preferred an application under Section 167(2) Cr.PC which was not done so at the relevant point of time, the learned counsel for the applicant has submitted that the chargesheet was received only after the application was already moved before the trial court and as such, the accused not being aware that the I/O has prayed for filing of a supplementary chargesheet, the said application under Section 167(2) could not be filed.

19. This submission of the learned counsel for the petitioner though valid at the relevant point of time, however it is noticed that nothing in this instant application was reference made to the provision of Section 167(2). Therefore, it appears that the applicant herein is not seeking relief on the ground of default bail, though in essence, the issue of default bail in the context of filing

of an incomplete chargesheet, has been highlighted by the applicant in these proceedings by leading this Court to the many authorities cited (supra).

20. On the issue of an alleged incomplete chargesheet, particularly when a prayer was made by the I/O to file the FSL report later by way of a supplementary chargesheet, which, according to the applicant would not amount to the filing of a chargesheet and thus if not filed within the stipulated period, would entitle the accused to be allowed to go on default bail, this Court on consideration of the submission made in this regard and the relevant authorities cited, would agree with the contention of the learned AAG that the issue not having been finally decided by a three judge bench of the Supreme Court, as was opined by the Hon'ble Sikkim High Court in the case of Anwar Alam (supra), this Court too, would desist from forming any opinion on the issue at this point of time. The question of grant of default bail on the ground of an alleged incomplete chargesheet being filed is therefore not a consideration before this Court in these proceedings.

21. The principle of grant of bail under Section 37 of the NDPS Act stressing on the word "reasonable ground to believe" that the person is not guilty of the offence has been dealt with by the Hon'ble Supreme Court at para 22 in the case of MD. Nawaz Khan(supra). At para 25 the Court has dealt with the issue of conscious possession and has referred to the case of Madan

Lal v. State of Himachal Pradesh wherein at para 23 of the same it was observed that the word “conscious” means awareness about the particular fact. It is a state of mind which is deliberate or intended. The learned AAG has also referred to para 34.2 of the same judgment wherein the Supreme Court has mentioned the fact that the complaint notices that the CDR analysis of the mobile number by the respondent indicates that the respondent was in regular touch with the other accused person who were known to him.

22. What is apparent is that in this case there is no question of attraction of the provision of Section 37 NDPS Act as the quantity seized was of intermediate range. As to the issue of conscious possession and the CDR analysis, it is too early to come to any conclusion on this, since the same has to be proved at the trial and as such, the reliance of the learned AAG on this case is not well founded.

23. The last ground pressed for by the applicant is the ground of sickness or rather the health condition of the accused who is said to be a patient with confirmed HIV positive status and as such, on this ground, bail is prayed for.

24. The State respondent has not made any counter argument as regard the prayer made on the ground of health of the accused which may be taken into account while considering the prayer made for grant of bail.

25. This Court has opined that the first and even the second ground urged by the applicant may not be acceptable grounds for grant of bail in favour of the accused person, yet the third ground on account of health deserves consideration.

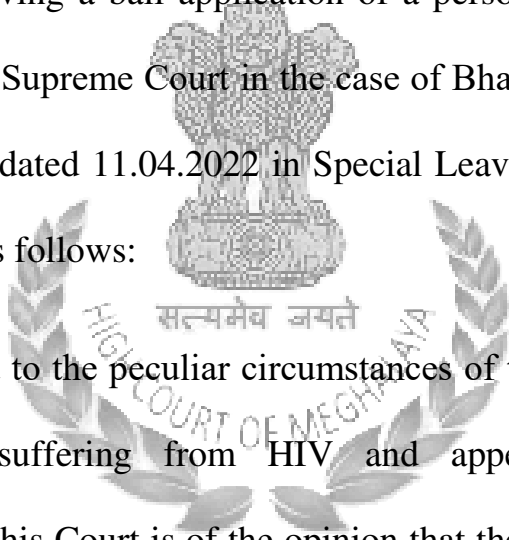
26. In Chapter XXXIII of the Code of Criminal Procedure is found the provisions as to bail and bail bonds. The sections incorporated therein starts from Section 436 and ends at Section 450. In Section 437 what is provided is for bail which may be granted in cases of non-bailable offence. Though the effect of the section excludes the jurisdiction of the High Court or the Court of Session, yet the principle found therein may be applicable to a case taken up by the Court of Session or the High Court. Sub-section 1 speaks of a person arrested to be released on bail, however under clause (i) and (ii) of the said sub-section 1 there are provided conditions under which a person arrested may not be released on bail. However, in the proviso to clause (i) and (ii), a person so arrested who may not be released on bail in the normal course, could be released on bail if such person is under the age of 16 years or is a woman or is sick or infirm.

27. This Court finds has no difficulty to borrow the said principles and to apply it to an application under Section 439 which is also part of Chapter XXXIII. In the case before this Court, the prayer for grant of bail is on behalf

of a woman and more importantly, one who is sick.

28. Taking into account the gravity and seriousness of the offence alleged, particularly one involving public interest, this Court would not have considered the prayer made, but for the admitted fact that the accused is a woman and is confirmed as suffering from HIV Positive for which she may require specialized treatment.

29. In a case involving a bail application of a person suffering from HIV Positive, the Hon'ble Supreme Court in the case of Bhawani Singh v. State of Rajasthan vide order dated 11.04.2022 in Special Leave to Appeal (Crl.) No. 2225/2022 has held as follows:



“Having regard to the peculiar circumstances of the case given that the petitioner is suffering from HIV and appears to be immuno compromised, this Court is of the opinion that the case for grant of bail is made out.”

30. Accordingly, on this ground alone, the application for grant of bail is hereby allowed.

31. The accused Smti X is hereby directed to be released on bail, if she is not wanted in any other case on the following conditions:

- i. That she shall not abscond or tamper with the witnesses;
- ii. That she will appear before the Trial Court as and when required;
- iii. That she will not leave the jurisdiction of the State without prior permission from the Trial Court;
- iv. That she shall bind herself with a personal bond of ₹ 1,00,000/- (Rupees one lakh) only with two solvent sureties of like amount to the satisfaction of the Trial Court.

32. With the above, this application is hereby disposed of. No costs.



**Judge**

Meghalaya  
27.06.2023  
"Tiprilynti-PS"