

Serial No. 01
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

BA. No. 15 of 2023

Date of Decision: 20.06.2023

Shri. Jopbenik Siangshai

Vs.

State of Meghalaya

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioner/Appellant(s) :

Mr. S. Pandit, Adv.

For the Respondent(s) :

Mr. K.P. Bhattacharjee, 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 |

JUDGMENT (ORAL)

1. Heard Mr. S. Pandit, learned counsel appearing on behalf of the petitioner as well as Mr. K.P. Bhattacharjee, learned GA appearing on behalf of the State respondent.

2. The learned counsel for the petitioner has submitted that on an information given by one S.I. S. Buam of Umkiang PPP, East Jaintia Hills District indicating therein that on 06.03.2023 at around 11:00 AM, on credible information being received that a drug peddler named Raju Dkhar was proceeding from Kalain, Cachar towards Umkiang Village,

Meghalaya with his friend in a vehicle being a Maruti Car 800, the police had accordingly set up a checkpoint and has intercepted the said vehicle at Umkiang.

3. On a search being conducted, the police recovered a packet covered with black plastics/polythenes, in which was found seven soap boxes/cases containing orange colour powder materials suspected to be contraband or banned psychotropic substances, which after the preliminary test, was found to be positive for Heroin. Accordingly, the occupant of the said vehicle Raju Dkhar and Lamphrang Kyndait were arrested.

4. In course of investigation, the accused persons have revealed to the police that they were instructed to take the consignment from Kalain on specific instruction by one Jop Siangshai hailing from Ladrymbai Datsympuin, East Jaintia Hills. Accordingly, the said Jop Siangshai was also arrested in connection with the case, which by then has been registered as Lumshnong P.S. Case No. 10 (03) of 2023 under Section 21 (b)/29 NDPS Act.

5. In course of the proceedings, the Investigating Officer (I/O) has seized the said materials and has also examined relevant witnesses and has complied with all the due procedure and accordingly, charge sheet was filed, wherein the I/O has found that a prima facie case is well made out

against all the three accused therein and they were directed to stand trial before the competent court of jurisdiction. There is a rider, however as far as the charge sheet is concerned, wherein the I/O has made a prayer that since the FSL Expert Analysis Opinion with regard to the seized material not having been received, therefore, it is prayed that as and when the said FSL report is received, a supplementary charge sheet will be submitted before the court. In the meantime, one of the co-accused that is, Lamphrang Kyndait was released on bail on 18.05.2023 by the Court of the learned Special Judge (NDPS), Khliehriat.

6. The petitioner herein has approached this Court with this instant application under Section 439 Cr.P.C, seeking bail, firstly, on the ground of parity, inasmuch as, since one of the co-accused have been released on bail, the same benefit should be extended to the petitioner herein. However, the main thrust of the petitioner's argument is that the charge sheet filed by the I/O is incomplete since the prayer was for filing of the supplementary charge sheet after receipt of the relevant FSL report. This, according to the learned counsel for the petitioner amounts to an incomplete charge sheet, which could also be termed as no charge sheet at all and therefore, on this premise, the petitioner/accused having been in custody for more than 100(hundred) days or so, is accordingly entitled to be granted default bail under Section 167 (2) Cr.P.C.

7. To further buttress his contention, the learned counsel has referred to the case of Divyas Bardewa v. Narcotics Control Bureau, wherein the Hon'ble Supreme Court in Special Leave to Appeal (Crl.) No. 11628/2022 vide order dated 01.05.2023, has passed an interim order relating to the parties therein, inasmuch as, the petitioners in that case who were in custody in connection with a case under the NDPS Act and who had been in custody for some time, have been directed to be released on bail.

8. The main consideration before the Hon'ble Supreme Court is on the aspect of a charge sheet filed, sans the FSL report and before the issue could be settled, considering the fact that the petitioners therein are in custody for quite some time, therefore, the grant of bail.

9. The learned counsel for the petitioner has also submitted that following the rationale of the said order dated 01.05.2023 passed by the Hon'ble Supreme Court, the Hon'ble High Court of Madhya Pradesh in Misc. Criminal Case No. 20197 of 2023 in the case of Kanhaiyalal v. The State of Madhya Pradesh Station House Officer through Police Station Manasa, Distt. NEEMUCH (Madhya Pradesh) vide order dated 11.05.2023, has allowed the applicant therein to be released on bail on conditions imposed therein.

10. Another order passed by the Hon'ble Delhi High Court in the

case of Ansar Ahmed v. State (NCT of Delhi) was cited by the learned counsel, wherein the Hon'ble High Court in an application seeking for grant of bail under similar facts and circumstances as the present case, inasmuch as, in the case under consideration before the Hon'ble Delhi High Court, the charge sheet has been filed and the petitioner therein was arrested on the basis of disclosure statement of the co-accused persons and also the recovery of the alleged contraband item or psychotropic substance was only of an intermediate quantity, considering the fact that the trial may take a long time to conclude, the Hon'ble Delhi High Court has accordingly granted relief to the petitioner therein by directing him to be released on bail.

11. Similarly, in the case of Deepak Gupta & Ors v. U.T. of J&K & Anr, the High Court of Jammu & Kashmir and Ladakh at Jammu in a bail application has allowed the same, inter alia, opining that the rigours of Section 37 of the NDPS Act will not apply to a case where intermediate quantity of Narcotic was recovered from the applicant therein.

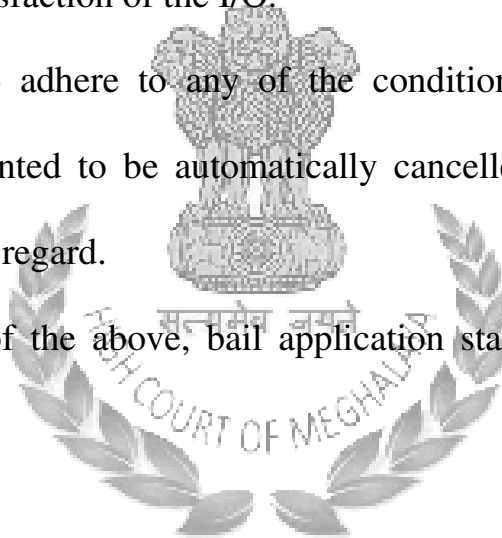
12. This Court, on consideration of the authorities cited, particularly the case of Divyas Bardewa (supra) which issue is more or less similar to the issue involved in the case of the petitioner herein, the prayer made for grant of bail has to be allowed.

13. Accordingly, the bail application is allowed on conditions that:

- i) The petitioner shall not abscond or tamper with the evidence and witnesses;
- ii) He shall cooperate with the I/O as and when required;
- iii) He shall not leave the jurisdiction of Meghalaya without prior permission of the I/O or the court concerned and
- iv) He shall furnish a personal bond of ₹ 2,00,000/- (Rupees two lakhs) only with one surety of like amount to the satisfaction of the I/O.

14. Failure to adhere to any of the conditions stated above will render the bail granted to be automatically cancelled on application of prayer made in that regard.

15. In view of the above, bail application stands disposed of. No costs.



Judge

Meghalaya
20.06.2023
"D. Nary, PS"