

Serial No. 01
Supplementary List

HIGH COURT OF MEGHALAYA
AT SHILLONG

BA. No. 17 of 2023

Date of Order: 06.07.2023

Shri. Ajay Thapa Vs. State of Meghalaya & Anr.

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioner/Appellant(s) : Mr. S. Panthi, Adv.
For the Respondent(s) : Mr. N.D. Chullai, AAG. with
Ms. Z.E. Nongkynrih, 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 |

ORAL:

1. Heard Mr. S. Panthi, learned counsel for the petitioner who has preferred this application under Section 439 Cr.P.C with a prayer for grant of bail on behalf of the accused Shri. Bijay Thapa.
2. The learned counsel for the petitioner has submitted that the accused Shri. Bijay Thapa is a Taxi Driver who on 26.03.2023 was carrying two passengers with him through the Guwahati road, however, on reaching Byrnihat Police Outpost, the accused was intercepted by the police

personnel, who upon searching the same, has recovered alleged contraband substances suspected to be Heroin weighing about 140.37 grams. Accordingly, the said accused person along with two occupants of the said vehicle were detained by the police for offences under the NDPS Act, particularly under Section 21(b)/25/209 of the said Act in connection with Nongpoh P.S. Case No. 31 (3) of 2023.

3. On investigation being conducted, the Investigating Officer (I/O) had filed the charge sheet with the findings that a prima facie case is well made out against the said accused person Shri. Bijay Thapa and two other co-accused persons. The stage of the case is for supply of copies to the accused persons.

4. The learned counsel has further submitted that the application for grant of bail has been moved before the Trial Court on two occasions which was rejected. Hence, this application.

5. The learned counsel has also submitted that the accused person in question is innocent and has no connection with the alleged offence, inasmuch as, he is just a driver and has been using the vehicle for his day to day living and as such, has no knowledge of what the passengers carry with them in the vehicle. It is therefore prayed that this application may be allowed and the bail may be granted with any conditions to be imposed by this Court.

6. Per contra, Mr. N.D. Chullai, learned AAG appearing on behalf of the State respondents has submitted that the complicity of the accused Shri. Bijay Thapa in the case is very much apparent, inasmuch as, the said alleged contraband substance was found hidden under the driver's seat which could not have been done so without his knowledge. It is also submitted that the accused person is very well known to the other co-accused persons and as such, there is a nexus therein. It is prayed that this application may be dismissed as devoid of merit.

7. This Court has given due consideration to the submission made and has gone through the application and the annexures thereto, including the charge sheet which has been annexed herein. Needless to say, the evidence in this case has not commenced and only then charge sheet has been filed. According to the I/O, there is strong evidence, rather prima facie evidence that the accused is involved in the said offence. In fact, on perusal of the statement made by the accused under Section 161 Cr.P.C, he has clearly stated that the two co-accused persons are his friends and are well known to him. Though, in criminal proceedings, an accused person is considered to be innocent until proven guilty, however, when there is a strong prima facie evidence against such accused and considering the gravity and nature of the offence involved, this Court would be reluctant to be lenient in such a situation. Accordingly, on merits, there appears to be no

evidence or factor which would go in favour of the said accused person at this point of time.

8. In view of the observations made above, this application is devoid of merit and the same is hereby dismissed.

9. BA. No. 17 of 2023 stands disposed of accordingly.

Judge

Meghalaya
06.07.2023
"D. Nary, PS"

