

Serial No. 01

Supplementary List

HIGH COURT OF MEGHALAYA
AT SHILLONG

BA. No. 26 of 2023

Date of Decision: 11.08.2023

Shri. Abdul Mohit Barbhuiya

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) : Mrs. N.G. Shylla, Sr. GA. with
Mr. A.H. Kharwanlang, GA.

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

JUDGMENT (ORAL)

1. Heard Mr. S. Pandit, learned counsel for the petitioner who has submitted that this is an application filed under Section 439 Cr.P.C with a prayer for grant of bail to the petitioner, Shri. Abdul Mohit Barbhuiya, who is currently in custody in connection with CrI. NDPS Case No. 3 of 2023 arising out of Lumshnong P.S. Case No. 04 (01) 2023 under Section 22(c)/29 of Narcotic Drugs and Psychotropic Substances Act, 1985.

2. According to the learned counsel, the brief facts of the case is that

on 12.01.2023, the petitioner herein along with other passengers were travelling in a vehicle bearing registration No. ML-11-3832, whereby they were intercepted by the police at Naka checking at Umkiang and on a search being conducted, contraband substances suspected to be Amphetamine, popularly known as Yaba Tablets was seized from the said vehicle and from one person travelling in the said vehicle. Accordingly, an FIR dated 12.01.2023 was lodged in this regard and investigation was launched. In the meantime, all the persons who were travelling in the said vehicle were detained in custody. In due course, two of the co-accused persons were released on bail by the learned Trial Court.

3. It is the submission of the learned counsel that the petitioner has approached this Court, mainly on two grounds, firstly, that he is entitled to grant of bail on the principle of parity, inasmuch as, when two co-accused persons have been enlarged on bail, it would be, but proper for the same treatment to be accorded to him in line with the provision as provided under Article 14 of the Constitution of India read with Article 21 of the same, the second ground raised by the petitioner is that he is a sick person suffering from epileptic seizure which would occur from time to time and putting his life in danger, if proper treatment is not given to him. In fact, while, he was in custody in the jail, he was referred for treatment to the hospital on two

occasions. Further, the learned counsel has submitted that the petitioner is innocent and the alleged contraband substance was never recovered from his possession. It is therefore prayed that this application may be allowed and that he may be enlarged on bail with any conditions that this Court may deem fit and proper to impose.

4. Mrs. N.G. Shylla, learned Sr. GA appearing on behalf of the State respondent has objected to the submission and prayer made, firstly, on the ground that the petitioner is very much involved in the case, inasmuch as, in the FIR, it was clearly indicated that he was a known drug peddler and it was on his leading that the police has recovered the alleged contraband substance, which was found from the backseat of the driver in a blue carry packet covered with brown tape which on being opened, was found to contain 50 black pouches and on opening of the pouches, a total number of 10,000 orange tablets suspected to be Yaba Tablets was recovered.

5. The learned Sr. GA has also referred to the charge sheet filed and has pointed out that in the said charge sheet, the Investigating Officer has clearly recorded the fact that the said seizure of 50 black pouches were seized on the leading of the petitioner herein. It is therefore prayed that this is not a fit case for grant of bail at this stage.

6. On consideration of the submission made by the parties, it is

pertinent to mention that this is a case under the NDPS Act, more particularly under Section 22(c)/29 of the NDPS Act. The provision of Section 22(c) would read as follows:

“22. Punishment for contravention in relation to psychotropic substances. –

- (c) where the contravention involves commercial quantity, with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years and shall also be liable to fine which shall not be less than one lakh rupees but which may extend to two lakh rupees.”

7. Section 29 of the NDPS Act speaks of punishment for abetment and criminal conspiracy.

8. As regard the seized quantity under the NDPS Act as noted above, a Notification has been referred to, which Notification has specified small quantity and commercial quantity as regard the Narcotic Drugs and Psychotropic Substances and at serial No. 152 of the said table, under the heading ‘Amphetamine’ 2 grams constitute small quantity and 50 grams constitute commercial quantity. The seized contraband substance in this case is 1.055 Kgs which would constitute commercial quantity.

9. This being the case, the provision of Section 37 of the NDPS Act as regard bail would come into consideration. It is noted that the petitioner has not preferred any specific application nor made any prayer as regard Section 37 of the Act.

10. Be that as it may, the provision of the Act as regard bail, would lead one to see that bail where seizure of commercial quantity is concerned, would always be noted in the negative sense, inasmuch as, the Court would assume that bail is not to be granted, unless two conditions are fulfilled, that is, firstly, the Public Prosecutor is heard in the matter and secondly, that there are reasonable grounds to believe that the accused person is not guilty of such offence and that he is not likely to commit any offence, if enlarged on bail.

11. Again, as noted above, the charge sheet has been filed in this case and the opinion of the Investigating Officer is that there is found a well-established prima facie case against the petitioner/accused, for which he is directed to stand trial. It may be a matter of evidence as to whether the petitioner/accused person is guilty or not. However, at this stage of the proceedings, this Court cannot or is not confronted with any evidence that there are reasonable grounds to believe that the accused/petitioner is not guilty of the offence alleged.

12. Resultantly, this Court is of the opinion that the petitioner has not been able to make out a case for grant of bail, the same is rejected.

13. Before parting, it goes without saying that the complaint of the petitioner as regard his health condition is to be diligently taken care of by

the jail authorities and they are put to notice that the petitioner/accused or any of the inmates of the jail are to be given priority as far as the treatment of any ailment or complaint of sickness is concerned.

14. In view of the above, bail application is accordingly dismissed and stands disposed of. No costs.

Judge

Meghalaya
11.08.2023
"D. Nary, PS"

