

Serial No. 01
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

BA. No. 53 of 2023

Date of Decision: 09.11.2023

Shri. Amrit Mandal

Vs.

State of Meghalaya

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioner/Appellant(s) : Mr. S.A. Sheikh, Adv.
Mr. C.H. Thomlui, Adv.

For the Respondent(s) : Mrs. N.G. Shylla, Sr. GA. with
Mr. A.H. Kharwanlang, Addl. Sr. 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.A. Sheikh, learned counsel for the petitioner who has submitted that the petitioner is the nephew of the accused person Smti. Bina Sarkar who was arrested in connection with Nongpoh P.S. Case No. 190 (10) 2022 under Section 21(b)/29 of the NDPS Act and as such, has come before this Court with this instant petition seeking grant of bail on behalf of the said accused person.

2. It is also submitted that in due course, the Investigating Officer had filed the charge sheet, although, the same is not the complete charge sheet where a prayer was made before the Court of the learned Special Judge (NDPS), Nongpoh for filing of a supplementary charge sheet. As soon as the FSL report is received, the matter was however taken up for trial before the learned Special Judge (NDPS), Nongpoh and the stage of the trial is for recording of evidence. So far, only the examination-in-chief of one witness, that is, PW. 1 was taken up by the learned Special Court, whose evidence was recorded on 05.10.2023 and the cross-examination was reserved mainly on the ground that the learned counsel appearing for the accused has withdrawn from the case. The matter was again fixed on 19.10.2023 for cross-examination of PW. 1, but no cross-examination could be conducted due to the absence of the witness on the said date. In fact, the next date fixed by the court was on 01.11.2023 and on that date also the PW. 1 was found absent and as such, no cross-examination could be taken.

3. The learned counsel has also submitted that the accused person is not keeping well and even while she was in custody some months ago, she has to be hospitalized at Civil Hospital, Nongpoh for treatment of various ailments. On the ground of ill health of the accused person, this

Court may also consider the same as a ground for grant of bail, submits the learned counsel. The learned counsel has further submitted that the accused is innocent and is not at all involved as far as the alleged offence is concerned and no incriminating materials or evidence is found against her and on this ground too, the accused person may be enlarged on bail.

4. Finally, the learned counsel has referred to the case of *Anjali v. State (GNCT Delhi)* reported in 2023 SCC OnLine Del 6122, wherein the Hon'ble High Court of Delhi dealing with an application for grant of bail of an accused person, who was in custody on charges of being in possession of an intermediate quantity of banned contraband substances, the Hon'ble Court, while opining that recovery of an intermediate quantity of ganja, would not come within the parameters of Section 37 of the NDPS Act, and also the fact that the accused was in custody since 15.05.2023, the investigation having been concluded and charge sheet filed, the Court vide order dated 06.09.2023, had accordingly granted bail to the accused person therein with certain conditions.

5. Another case referred to is the case of *Rakesh Singh v. State of West Bengal* reported in 2021 SCC OnLine Cal 3994, wherein the Hon'ble Calcutta High Court also dealing with an application for grant of bail, wherein the accused person was in custody in connection with the

offences under the NDPS Act, the Court having considered the import of Section 37 of the NDPS Act, under the facts and circumstances of the particular case under consideration, has inter alia, opined that the allegations of the accused being in possession of an intermediate quantity of cocaine, the restriction under Section 37 of the NDPS Act, would not apply and also in consideration of the nature and gravity of the alleged offence and the materials on record, and also the fact that the accused person therein has been in custody since 23.02.2021, the Court had accordingly granted bail with certain conditions imposed. The State had preferred an appeal before the Hon'ble Supreme Court against this order, however, the Hon'ble Supreme Court in the case of State of West Bengal v. Rakesh Singh alias Rakesh Kumar Singh reported in 2022 SCC OnLine SC 828, has in effect agreed with the decision of the Hon'ble Calcutta High Court and has dismissed the appeal. In view of the above proposition of law, the learned counsel has submitted that the accused may be allowed to be enlarged on bail with any conditions to be imposed by this Court.

6. Mrs. N.G. Shylla, learned senior GA appearing on behalf of the State respondent has strongly opposed the prayer made by the petitioner and has submitted that the ground made out by the petitioner for grant of bail on behalf of the accused person, that is, on the ground of

sickness, the fact that the accused person was sick is not denied. However, records would show that she was referred to Civil Hospital, Nongpoh and was hospitalized on 08.10.2022, which is about a year ago.

7. As to the contention that the trial is proceeding at a very slow pace and that no evidence has been recorded, the learned senior GA has pointed to Annexures - 3 and 4 of this petition, wherein the petitioner has annexed the relevant order sheet of the Trial Court which shows that the evidence of PW. 1 was recorded on 05.10.2023, but the cross-examination was reserved. However, it is due to the delay caused by the accused that the cross-examination of the witness could not be taken up. In fact, the last date fixed for such cross-examination was 01.11.2023 where again the same could not be taken up. This would only indicate that evidence has been recorded by the learned Trial Court and as such, there is no ground for the petitioner to rely on the said portion of the order dated 25.07.2023 passed by this Court in BA. No. 20 of 2023.

8. As to the assertion of the learned counsel for the petitioner that no contraband substances was seized or found in possession of the accused person, the learned senior GA has again referred to the order dated 25.07.2023 (supra) passed by this Court, wherein at para 9 of the same, an observation was made that the accused person was found to be in

possession of such alleged contraband substances. It is therefore prayed that this petition being devoid of merit, the same may be dismissed.

9. This Court has duly considered the submission and contention made by the learned counsel for the respective parties and is also aware that the accused person in question is in custody for more than one year. The stage of the case is for recording of evidence and as such, there is no question of the case being under investigation.

10. The authorities relied upon by the learned counsel for the petitioner, that is, the case of Anjali (supra) as well as the case of Rakesh Singh (supra) would show that the Court has considered, firstly, the gravity of the alleged offence which is seizure of an intermediate quantity and also the fact that the accused has been in custody for quite some time, the rigors of Section 37 of the NDPS Act not being applicable to the case in question, the Hon'ble Court has allowed the prayer made and granted bail to the accused person therein.

11. In the case of Anjali (supra), the Hon'ble High Court of Delhi at para 10 of the same, has noted that the accused person therein has been in custody since 15.05.2023, the charge sheet having been filed and the accused person was found in possession of an intermediate quantity of ganja, the Court in view thereof, had granted bail to the accused person. In

the facts and circumstances of the case presented herein, this Court would note that the matter has proceeded for evidence and therefore, there is no requirement for custodial questioning of the accused. It is well settled that custody of an accused person is not for imposition of punishment or penalty, but only to ensure that the accused person shall not abscond or tamper with the evidence and witnesses. However, many a times in appropriate cases on imposition of strict conditions, bail is usually granted, the principle of bail and not jail being employed.

12. It is also noticed that in the case of ***Sanjay Chandra v. CBI reported in (2012) 1 SCC 40*** at para 21, the Hon'ble Supreme Court has observed that:

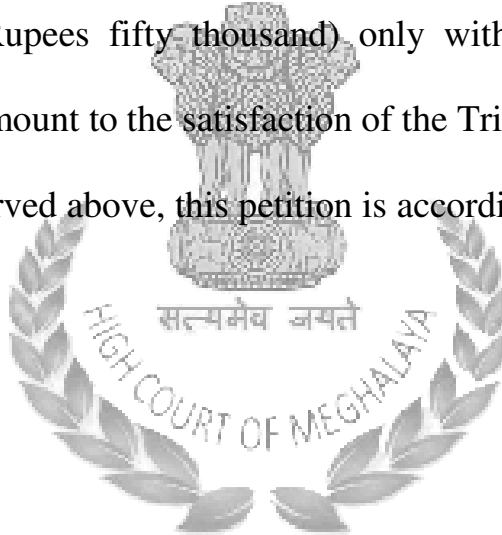
“21. In bail application, generally, it has been laid down from the earliest times that the object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventative. Deprivation of liberty must be considered a punishment, unless it is required to ensure that an accused person will stand his trial when called upon. The courts owe more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty.”

13. In view of the facts and circumstances of this case, this Court is hereby inclined to allow the prayer made and accordingly, the accused person Smti. Bina Sarkar is hereby enlarged on bail with the following conditions:

- i) She shall not abscond or tamper with the evidence and witnesses;
- ii) She shall not leave the jurisdiction of the State of Meghalaya without prior permission of the court;
- iii) She shall appear before the court concerned as and when required;
- iv) She shall bind herself on a personal bond of ₹ 50,000/- (Rupees fifty thousand) only with one surety of like amount to the satisfaction of the Trial Court.

14. As observed above, this petition is accordingly disposed of. No costs.

Meghalaya
09.11.2023
"D. Nary, PS"



Judge