

Serial No. 02
Supplementary List

HIGH COURT OF MEGHALAYA
AT SHILLONG

BA. No. 54 of 2023

Smti. Thokchom Sila Devi Vs. State of Meghalaya & Anr.

Date of Decision: 22.11.2023

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioner/Appellant(s) : Mr. M.K. Borah, Adv.
For the Respondent(s) : Mr. N.D. Chullai, AAG. with
Mr. J.N. Rynjah, GA.

- 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. M.K. Borah, learned counsel for the petitioner who has submitted that the petitioner herein is the wife of Shri. Thokchom Naba Singh, an accused arrested in connection with Umsning P.S. Case No. 21 (7) 2023 under Section 21(c)/29 of the NDPS Act.

2. The learned counsel has submitted that the accused person was arrested on 01.07.2023, on his alleged involvement with seizure of a

certain amount of alleged contraband drugs from two persons and on the basis of such information, the vehicle in which he was travelling was intercepted by the police and accordingly, he was also roped in connection with the said Umsning P.S. Case No. 21 (7) 2023.

3. At this stage, the only contention of the learned counsel for the petitioner is that the accused was not found to be in possession of the alleged contraband and that he has no connection whatsoever with the co-accused who were arrested in this case. This being the case, he is therefore entitled to be enlarged on bail.

4. As far as the aspect of possession is concerned, the learned counsel has referred to the case of Sorabkhan Gandhkhan Pathan and another v. State of Gujarat in Criminal Appeal Nos. 1005-06 of 2001 at para 7 and also the case of Kishore Bira v. State of Odisha in BLAPL No. 9629 of 2021 at paras 8 and 9, to say that the authorities cited in this case is that when there is no evidence of possession, the accused person cannot be linked to the offence alleged against him. It is therefore prayed that this petition may be allowed and that the accused person may be enlarged on bail with any conditions that this Court may deem fit and proper to impose.

5. Per contra, Mr. N.D. Chullai, learned AAG appearing on behalf of the State respondent has submitted that at the outset, the case involved a very heinous offence, inasmuch as, the negative impact of the availability of drugs in our society has a cascading ill-effect on all concerned, for which it is incumbent upon the law enforcement authorities to put a stop to such menace.

6. As to the contention of the petitioner on the issue of possession, the learned AAG has submitted that the accused has admitted to be involved in the said case when he has given his statement before the police. In any case, the section involved seizure of commercial quantity of illicit drugs and accordingly, the rigors of Section 37 of the NDPS Act have to be applied. In support of his submission, the learned AAG has referred to the case of *Shri. Khupliansum v. State of Meghalaya*, wherein vide order dated 31.07.2023 passed in BA. No. 22 of 2023 at para 12, this Court has observed that:

“12. On the contention of the learned counsel for the petitioner that the alleged contraband was not found in the possession of the accused person, the learned AAG has cited the case of Union of India Through Narcotic Control Bureau, Lucknow v. Md. Nawaz Khan: (2021) 10 SCC 100 at para 28 & 29 of the same, and has submitted that absence of possession of

contraband on the accused person, would not dilute the level of scrutiny required under Section 37(1)(b)(ii) of the NDPS Act.”

7. The case of Union of India v. Ajay Kumar Singh alias Pappu reported in 2023 SCC OnLine SC 346 was also referred to by the learned AAG, wherein the Hon’ble Supreme Court at para 16 of the same as observed as follows:

“16. In view of the above provisions, it is implicit that no person accused of an offence involving trade in commercial quantity of narcotics is liable to be released on bail unless the court is satisfied that there are reasonable grounds for believing that he is not guilty of such an offence and that he is not likely to commit any offence while on bail.”

8. In view of the authorities cited and the fact that the accused could not offer any plausible reason to satisfy this Court that he is not guilty of the offence alleged in line with the stated provision of Section 37 NDPS Act, it is prayed that this petition being devoid of merit, the same is liable to be dismissed.

9. This Court, on consideration of the submission made, has also perused the petition and has also gone through the case diary which was produced today. The authorities stated by the respective parties are also considered. What is apparent is that the accused person has been arrested

in connection with the said Umsning P.S. Case No. 21 (7) 2023, where seizure of commercial quantity of illicit drugs was made. Altogether, there are three accused persons including the accused person in question being detained in connection thereof. According to the learned AAG, investigation is still ongoing.

10. At this juncture, it is the considered opinion of this Court that investigation should be allowed to continue to nab other persons who are involved in the case. As far as the accused person in question is concerned, prima facie, his complicity in the case has been established and accordingly, the provision of Section 37 NDPS Act will be applicable.

11. A bare reading of the said provision, would show that a person arrested or accused of an offence punishable under Section 19 or Section 24 or Section 27A and also when the quantity of the seized contraband is of commercial quantity, such person shall not be released on bail, unless the Public Prosecutor has been given an opportunity to oppose the application for such release, more importantly, unless there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

12. This Court, relying on the provision of Section 37 (1)(ii) of the

NDPS Act, would say that the accused person in question has not been able to offer any reason to convince this Court that he is not guilty of such offence. In fact, if the submission of the learned AAG is to be accepted, the accused person has also been suspected to be involved in drug related case. This being the case, this petition is devoid of merit, the same is hereby dismissed and disposed of.

13. Let the case diary be returned to the prosecution.

Meghalaya
22.11.2023
"D. Nary, PS"



Judge