

Serial No. 03
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

BA. No. 55 of 2023

		Date of Decision: 16.11.2023
Smti. Lily Sitlhou	Vs.	State of Meghalaya & Anr.

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioner/Appellant(s) : Ms. K. Chisa, Adv.

For the Respondent(s) : Mr. J. Thabah, GA.
Mr. R. Gurung, 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. This is an application under Section 439 Cr.P.C for grant of bail in favour of Miss Neimeracy Singsit, who was arrested on 04.05.2023 in connection with Nongpoh P.S. Case No. 51 (05) 2023 under Section 21(b)/29 NDPS Act.

2. The FIR was lodged before the Officer-in-Charge, Nongpoh Police Station on 03.05.2023. The informant is the I/C Byrnihat Police Outpost, Ri-Bhoi District. From the body of the FIR, what could be seen

is that the informant has stated that on 02.05.2023, on receipt of telephonic information regarding a person named Shri. Promod Chettri who is travelling from Guwahati to Shillong and who is suspected to be carrying some drugs consignment on the vehicle approaching the road opposite Byrnihat Police Outpost, it was accordingly stopped for checking after all formalities as required under the NDPS Act, was complied with. It is further stated that 4(four) soap boxes containing substances suspected to be heroin were seized from the said vehicle, and on being tested, the same was confirmed to be heroin. Accordingly, the driver of the vehicle Shri. Promod Chettri was arrested and Nongpoh P.S. Case No. 51 (05) 2023 under Section 21(b)/29 NDPS Act was registered.

3. In course of interrogation of the arrested accused person, it was revealed by him that the said contraband substances were handed over to him by Miss Neimeracy Singsit, who is staying somewhere near the Airport at Guwahati. Accordingly, on the basis of such information, Miss Neimeracy Singsit was arrested in connection with the case.

4. In due course, after completion of investigation, the Investigating Officer had filed the charge sheet and had observed that the accused persons, Shri Promod Chettri and Miss Neimeracy Singsit have admitted to be involved in the crime and accordingly, the Investigating

Officer has further observed that a prima facie case under Section 21(b) of the NDPS Act is found well established against the accused person Shri. Promod Chettri and a case under Section 29 of the NDPS Act is found well established against the accused person Miss Neimercy Singsit and they are sent before the competent court to stand trial.

5. Ms. K. Chisa, learned counsel for the petitioner has submitted that the petitioner has now approach this Court with a prayer for grant of bail on behalf of the accused person Miss Neimercy Singsit. She also submits that there is no evidence against this accused person, inasmuch as, the alleged drugs were not seized from her possession and she was also not present in the vehicle at the time of the said seizure not being conscious or even constructive possession of the alleged contraband drugs. The accused person Miss Neimercy Singsit could not have been remanded to custody on the allegation that she was arrested only on the basis of the statement made by the co-accused Shri Promod Chettri, further submits the learned counsel. It is also submitted that this ought to be the basis for the arrested or eventually conviction of the accused person in question since the confession or accusation by the co-accused cannot implicate the accused person herein.

6. Another limb of argument urged by the learned counsel is that

the accused is a young girl of about 20 years or so and she is already in custody for more than 6(six) months. Therefore, having no criminal antecedents, she may be allowed to be enlarged on bail with any conditions that this Court may deem fit to impose, to which she will abide by.

7. The fact that the alleged seized contraband is of an intermediate quantity as per the provision of Section 21 of the NDPS Act, therefore, the rigors of Section 37 of the said Act is not applicable and as such, this Court may be pleased to allow the prayer of the petitioner for grant of bail. The learned counsel has also refuted the allegations made by the prosecution that the complicity of the accused in the case is mostly based on the seizure of the mobile phone, wherein the call details report (CDR) would show the many conversations made between the accused herein and the co-accused Shri. Promod Chettri. However, while filing the charge sheet before the court, copy of which has been given to the accused person at para 20, wherein the list of enclosures has been detailed which ranges from serial No. (a) to (s), nothing is indicated therein about the CDR details.

8. Mr. J. Thabah, learned GA appearing on behalf of the State respondent has submitted that the involvement of the accused Miss

Neimercy Singsit is well established and the fact that the seized contraband drugs were supplied by her to the co-accused person Shri. Promod Chettri could not be refuted since evidence of the transaction has been found from the CDR showing all the conversations between the accused and the co-accused. In view of this fact, it is submitted that the petitioner has not been able to make out a case for grant of bail and the same is liable to be rejected.

9. This Court having heard the learned counsel for the parties and on the basis of the materials on record including the case diary which was produced before this Court, the fact that the accused Miss Neimercy Singsit was arrested on her alleged involvement in a case of drug trafficking has been detailed in the charge sheet and other documents which are contained in the case diary. Though, it is an admitted fact that the said contraband drugs were not seized from the possession of the accused person, her involvement in the case can only be established during trial when evidence is being led in this regard. From the evidence of three witnesses, copy of whose deposition has been produced before this Court, nothing has come out to directly link the accused person with the alleged offence, though, all the witnesses have yet to depose before the court which may eventually lead to either conviction or acquittal of the

accused person in question.

10. This Court taking into consideration these aspects of the matter, that is, the fact that the accused person was not arrested while in possession of the said contraband drugs and also that she has no previous record as far as her involvement in criminal cases including drug related cases are concerned, and since the quantity seized is of an intermediate quantity, the rigors of Section 37 of the NDPS Act not being applicable and finally, since the charge sheet has already been filed and the case is taken up for trial before the competent court, at this point of time, it will not be relevant to further detain the accused person in custody.

11. In the case of *Rakesh Singh v. State of West Bengal* reported in 2021 SCC OnLine Cal 3994, the Hon'ble Calcutta High Court while dealing with a bail application under the NDPS Act involving offences under Section 21(b)/29 of the said Act, under the facts and circumstances of the case, has allowed the accused person to be enlarged on bail. It would be relevant to refer to paras 5 and 6 of the said order which reads as follows:

“5. Certain things are clear. Firstly, there was no recovery of contraband items from the physical possession of the petitioner. Nothing was recovered from the person of the petitioner or any place over which the petitioner had

exclusive control. We are conscious that mere non-recovery of contraband from a person's possession may not per se dilute the rigours of Section 37 of the NDPS Act.

6. However, even assuming that the petitioner had dominion or control over the contraband in question, admittedly intermediate quantity (76 gms) of cocaine was seized. It was urged on behalf of the State that the statements of witnesses would indicate that the petitioner was a regular purchaser of contraband items. However, the fact remains that in the present case only 76 gms of cocaine is involved. As observed by the Hon'ble Apex Court in the case of Sami Ullaha (Supra), where intermediate quantity of narcotics is involved, it may not be justified to apply the rigours of the provisions of Section 37 of the NDPS Act relating to grant of bail."

12. The case of Anjali v. State (GNCT Delhi) reported in 2023 SCC OnLine Del 6122 is also relevant for reference, wherein at paras 7 and 9 of the same, the Hon'ble Delhi High Court has observed as follows:

"7. In Rehmatullah @ Arman v. State of Delhi, Bail Application No. 2866/2022 decided on 24.11.2022, it was observed as under:-

Taking into account the factum that the allegations against the petitioner relate to the alleged recovery of an intermediate quantity of Ganja, to which the parameters of Section 37 of the NDPS Act, 1985 are not applicable and there being no previous adverse antecedents against the applicant, the applicant is allowed to be released on bail...

9. *In Gajender Bahadur v. The State Govt of NCT of Delhi, Bail Application No. 3655/2022 decided on 31.01.2023, it was observed as under:-*

6. *These are issues which can only be adjudicated after evidence. For the time being, the quantity alleged to be recovered from the applicant is at best 1170 grams of Ganja which is an intermediate quantity. The applicant has been in custody since 09.10.2020, charge-sheet already has been filed and no custodial interrogation of the applicant is required. As regards the other two cases against the applicant under the NDPS Act are concerned, the applicant has already been granted bail by the competent Courts of jurisdiction. The trial is not likely to conclude in near future and the continued incarceration of the applicant will not serve any purpose.*

7. *For the aforesaid reasons, the applicant is directed to be released on bail in FIR No. 473/2020 dated 07.10.2020, under Section 20 of the NDPS Act, registered at Police Station-Shastri Park...*

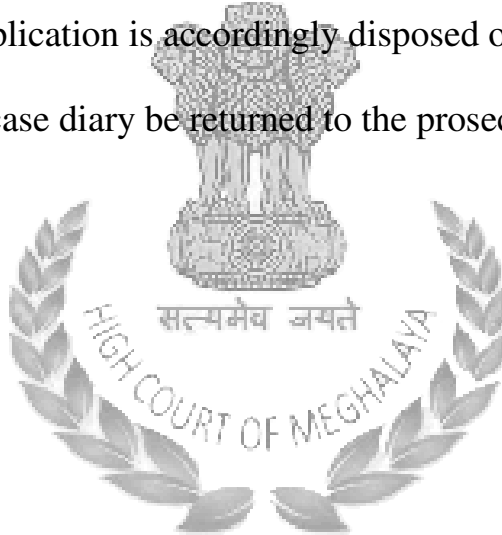
13. In view of the observations made hereinabove, this Court is inclined to allow this petition and to direct release of the accused person Miss Neimercy Singsit on bail on the following conditions that:

- i) She shall not abscond or tamper with the evidence and witnesses;

- ii) She shall not leave the jurisdiction of India 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. Bail Application is accordingly disposed of. No costs.

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



Judge

Meghalaya
16.11.2023
"D. Nary, PS"