

Serial No. 03
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

BA. No. 56 of 2023

Date of Decision: 21.11.2023

Smti. Ganga Sunar

Vs.

State of Meghalaya

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioner/Appellant(s) : Mr. R. Gurung, Adv.
Mr. J. Thabah, Adv.

For the Respondent(s) : Mrs. T. Yangi. B, 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 |

JUDGMENT (ORAL)

1. Shri. Sadeep Kumar Sunar was arrested in connection with Nongpoh P.S. Case No. 116 (10) 2023 under Section 120B/420/467/468/424/329/411/414/34 IPC.
2. This application under Section 439 Cr.P.C has been preferred

by the petitioner herein, who is the sister of the said arrested person with a prayer for grant of bail.

3. Mr. R. Gurung, learned counsel for the petitioner has submitted that the facts leading to the arrest of Shri. Sadeep Kumar Sunar was that on 05.10.2023 at about 7:30 pm, the police of Byrnihat Outpost received telephonic information that the arrested person was moving with a consignment of gold biscuits from Shillong towards Guwahati. At about 8:02 pm, on a tourist vehicle being intercepted at the checkpoint set up for the same, the police found three persons present in the vehicle which apart from the arrested person, also includes the driver and one Smti. Radhika Vetwal. On the vehicle being searched, seven gold biscuits were found from the possession of Smti. Radhika Vetwal. On being interrogated, the occupants of the vehicle failed to give satisfactory answers as to the possession of such gold biscuits without any valid documents and accordingly, they were detained for questioning and eventually, Shri. Sadeep Kumar Sunar and Smti. Radhika Vetwal were arrested and forwarded to custody.

4. It may be mentioned that the arrest of the said two accused persons was pursuant to an FIR dated 05.10.2023 lodged by Sub-Inspector

Amit Sinha of Byrnihat Outpost, Ri-Bhoi District.

5. The learned counsel has further submitted that on seizure of any suspected smuggling goods, the correct and proper procedure is for the matter to be proceeded by the Customs Officials and a case to be registered under the Customs Act. However, this was not done so in this case and the case was registered under various provisions of the Indian Penal Code, perusal of which according to the learned counsel, would show that the offences attributed to such sections of law are not at all relevant or connected to the accusation against the accused persons in questions.

6. The learned counsel has also submitted that the accused person Shri. Sadeep Kumar Sunar is not at all involved in any case of smuggling and the gold bars seized may not be from his possession. Even so, the seizure of such gold bars could not have been carried out by the police personnel, since there is a specific provision under Section 101 of the Customs Act, 1962 where the power for search and seizure including arrest has been assigned to an officer of the Customs Department. In any case, under sub-Section 7 of Section 104 of the said Customs Act, it is provided that all offences under this Act, shall be bailable.

7. Another limb of argument advanced by the learned counsel for the petitioner is that the accused person Shri. Sadeep Kumar Sunar has no criminal antecedent and is also the sole bread earner of the family consisting of his aged and infirm parents, wife and minor children and as such, it is prayed that the accused may be enlarged on bail having been in custody for about 45 days or so. In the event, he is enlarged on bail, the accused person will also abide by any conditions as this Court may deem fit and proper to impose.

8. The case of *Gian Chand & Others v. State of Punjab*, AIR 1962 SC 496, para 2, the case of *Assistant Collector Customs, Baroda and Another v. Mukbujusein Ibrahim Pirjada*, 1969 SCC OnLine Guj 52, para 1 and the case of *Ashish Raj v. Union of India Through the Principal Commissioner Customs in Criminal Miscellaneous No. 56714 of 2022* before the High Court at Patna, the last paragraph of the same was referred to by the learned counsel for the petitioner in support of his case.

9. Mrs. T. Yangi. B, learned AAG appearing on behalf of the State respondent has submitted that on being directed, the case diary of the said Nongpoh P.S. Case No. 116 (10) 2023 has been produced before this Court today. It is the submission of the learned AAG that

investigation would show that the accused person Shri. Sadeep Kumar Sunar is involved in the case of illegal procurement of the gold biscuits which were seized from his possession to which he has admitted that he had bought four of those seven gold biscuits and three of them were bought by Smti. Radhika Vetwal from one person when they met him at Rynjah, Shillong on 05.10.2023.

10. The learned AAG has also submitted that there is an organized syndicate involved in smuggling activities and the accused person in question is also a habitual offender in this regard. It is also submitted that the police are on the lookout for the person who has sold the said gold biscuits and since he could not be traced till date, releasing the accused person at this stage, would hamper the investigation and as such, it is prayed that this petition may be dismissed as devoid of merit.

11. This Court, upon hearing the learned counsels for the respective parties, and on perusal of the case diary and the authorities cited by the petitioner, would observe that the recovery of seven gold biscuits was actually from the possession of Smti. Radhika Vetwal. However, the accused person Shri. Sadeep Kumar Sunar has also admitted his part in the said transaction when he said that four of those gold biscuits

were bought by him.

12. The allegation of the prosecution that the accused person in question is involved in smuggling activities, has not been definitely ascertained as far as the present progress of investigation is concerned. Prima facie, it appears that the sections of law quoted in the case registered pursuant to the filing of the FIR may also have no relevance to the facts and circumstances of the case, though, it is too early at this stage to come to any definite conclusion. If it is an allegation of the accused person being involved in a case of smuggling, particularly of the seized gold bars, as submitted by the learned counsel for the petitioner, the matter ought to be taken cognizance of by the Customs Officials and a case to be registered under the Customs Act, which was not done so here.

13. Since the Customs Act is not in the picture as far as this case is concerned, all the authorities relied upon by the learned counsel for the petitioner has no relevance for consideration by this Court.

14. Be that as it may, on a general appraisal of the facts and circumstances of this case, and looking into the nature and gravity of the alleged offence, this Court is of the considered opinion that the accused person can be enlarged on bail provided he fulfills certain conditions to be

imposed by this Court.

15. It may not be out of place to refer to the case of ***Sanjay Chandra v. CBI reported in (2012) 1 SCC 40***, wherein at para 21 of the same, 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.”

16. In view of the observations made hereinabove, this Court is inclined to allow this petition and to direct release of the accused person Shri. Sadeep Kumar Sunar on bail on the following conditions that:

- i) He shall not abscond or tamper with the evidence and witnesses;
- ii) He shall not leave the jurisdiction of India without prior permission of the court;
- iii) He shall appear before the Investigating Officer or the

court concerned as and when required.

- iv) He shall bind himself on a personal bond of ₹ 30,000/-
(Rupees thirty thousand) only with one surety of like
amount to the satisfaction of the Trial Court.

17. Bail Application is accordingly disposed of. No costs.

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

Meghalaya
21.11.2023
"D. Nary, PS"

Judge

