

Serial No. 01
Supplementary List

HIGH COURT OF MEGHALAYA
AT SHILLONG

BA. No. 61 of 2023

Date of Decision: 08.12.2023

Smti. Sabitri Chettri @ Kali Chettri Vs. State of Meghalaya

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioner/Appellant(s) : Mr. J.I. Nongrum, Adv.
Ms. K. Gurung, Adv.

For the Respondent(s) : Mr. N.D. Chullai, AAG. with
Ms. R. Colney, 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. J.I. Nongrum, learned counsel for the petitioner who has submitted that this is an application filed with a prayer for grant of bail on behalf of the accused person Shri. Promod Chettri, who was arrested in connection with Nongpoh P.S. Case No. 51(5) 2023 under Section 21(b)/29 of the NDPS Act, 1985 and which case on completion of investigation and charge sheet filed, finding a prima facie case well

established against the accused person, he was accordingly brought to trial before the Court of the learned Special Judge, (NDPS), Ri-Bhoi District, Nongpoh in CrI. (NDPS) Case No. 13 of 2023.

2. The learned counsel has further submitted that the background of the case is that the accused person is a Tourist Taxi driver running a Tourist Taxi bearing registration No. ML-05-Q-2749. In his daily course of work, one day, i.e. 02.05.2023, while he was waiting for passengers at the Guwahati Airport to return to Shillong, an unknown lady who introduced herself as Mercy approached him and requested him to carry a parcel to Shillong and to deliver it to one person who will come and pick it up from him. He had no knowledge whatsoever what is contained in the said parcel, but has agreed to deliver the same as instructed.

3. While proceeding towards Shillong on the same day, i.e. 02.05.2023, his vehicle was stopped by some police personnel at Byrnihat opposite police outpost, and on a search being conducted in his possession, the said parcel was recovered and on the contents being checked, it was found that it contained illegal contraband substances. The accused person was accordingly arrested under the relevant provision of the NDPS Act and is now lodged at the District Prisons and Correctional Home at Nongpoh.

4. It is also the submission of the learned counsel that the accused person has no idea what the said parcel contained as he was going on his usual work of ferrying passengers to and from Shillong and as such, the alleged offence cannot be attributed to him.

5. Again, the learned counsel has submitted that the accused person has a minor son whom he is to take care of, his wife is since deceased, therefore, any further incarceration in custody would not only hamper or jeopardize his career and future, but would also have a psychological impact on the well-being of his minor son.

6. The seizure of the alleged heroin is also of an intermediate quantity as per the provision of the NDPS Act and therefore, the rigors of Section 37 of the NDPS Act will not be applicable and will not be a hindrance for this Court to enlarge the accused on bail, it is further submitted.

7. In support of his contention, the learned counsel has referred to the case of State of West Bengal v. Rakesh Singh, wherein on the High Court refusing to grant bail where seizure of contraband substance, that is, 76 grams of cocaine was made from the respondent therein. The Hon'ble High Court has granted bail on the ground that the quantity involved is that of an intermediate quantity. The State of West Bengal went on an

appeal against such order before the Hon'ble Supreme Court and the Hon'ble Supreme Court vide order dated 11.07.2022 in Criminal Appeal No. 923 of 2022 has upheld the decision of the High Court.

8. Another case relied upon by the learned counsel is the case of *Puranmal Jat v. State of Rajasthan* reported in 2023 SCC OnLine SC 1418, wherein the Hon'ble Supreme Court on an appeal made by the appellant therein who was refused bail in a case under the NDPS Act, the recovery contraband items said to have weight less than the stipulated commercial quantity, the impugned judgment was set aside and the appellant therein was allowed to be released on bail.

9. The learned counsel has finally relied on an order of this Court passed in BA. No. 55 of 2023, wherein vide order dated 16.11.2023, the co-accused in this case has been enlarged on bail. It is therefore prayed that this petition may be allowed and the accused person may be enlarged on bail with any conditions as deem fit and proper to be imposed by this Court.

10. Mr. N.D. Chullai, learned AAG appearing on behalf of the State respondent, while opposing the prayer made in this petition, has submitted that the case against the accused person Shri. Promod Chettri is well established as far as his complicity is concerned, the fact being that

the contraband drugs has been seized from his possession, inasmuch as, it was found from the dashboard of the vehicle he was driving and which fact has also been admitted by him.

11. The learned AAG has also submitted that on perusal of the evidence already adduced in the case, would show that the witnesses have clearly established the fact that the illegal contraband drugs was seized from the vehicle driven by the accused person in question.

12. This being the case, considering the gravity of the offence involved and the impact, the menace of the presence of drugs in society, it would be fit and proper for this Court to reject the prayer made for grant of bail.

13. The learned AAG has also referred to some authorities relied to the subject matter discussed herein, more particularly the case of Union of India v. Ram Samujh and another reported in (1999) 9 SCC 429, wherein at para 7 of the same, the Hon'ble Supreme Court has observed as follows:

“7. It is to be borne in mind that the aforesaid legislative mandate is required to be adhered to and followed. It should be borne in mind that in a murder case, the accused commits murder of one or two persons, while those persons who are dealing in narcotic drugs are instrumental in causing death or in inflicting death blow to

number of innocent young victims, who are vulnerable: it causes deleterious effects and deadly impact on the society; they are a hazard to the society; even if they are released temporarily, in all probability, they would continue their nefarious activities of trafficking and/or dealing in intoxicants clandestinely. Reason may be large stake and illegal profit involved. This Court, dealing with the contention with regard to punishment under NDPS Act, has succinctly observed about the adverse effect of such activities in Durand Didien v. Chief Secretary. Union Territory of Goa, (1990) 1 SCC 95 as under: (SCC p. 104, para 24)

"24. With deep concern, we may point out that the organised activities of the underworld and the clandestine smuggling of narcotic drugs and psychotropic substances into this country and illegal trafficking in such drugs and substances have led to drug addiction among a sizeable section of the public, particularly the adolescents and students of both sexes and the menace has assumed serious and alarming proportion in the recent years. Therefore, in order to effectively control and eradicate this proliferating and booming devastating menace, causing deleterious effects and deadly impact on the society as a whole, the Parliament in the wisdom has made effective provisions by introducing this Act 81 of 1985 specifying mandatory minimum imprisonment and fine."

14. Conceding that the quantity of contraband drugs seized in this case constitute intermediate quantity, however, the learned AAG has also

referred to the order dated 06.12.2023 passed in BA. No. 60 of 2023 in the case of Smti. Rupa Gurung v. State of Meghalaya to say that since seizure of contraband drugs was made from the accused therein, therefore, no concession was given in this regard. In the said case, this Court has also referred to the case of Smti. Lily Sitlhou v. State of Meghalaya & another, wherein vide order dated 16.11.2023 passed in BA. No. 55 of 2023 on similar facts and circumstances, had also rejected the prayer for grant of bail, even though the quantity involved therein is also that of intermediate quantity. In view of the submission made, the learned AAG has submitted that this petition may be dismissed as devoid of merit.

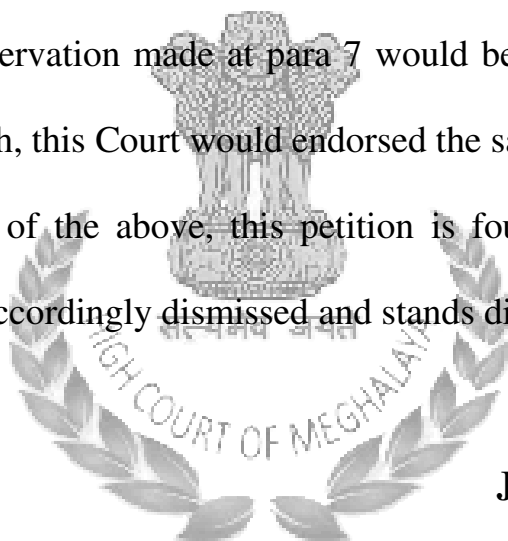
15. This Court has considered the submission made by the parties and has perused all the relevant materials on record, including the papers produced by the learned counsels before this Court and has come to the conclusion that the case involving the accused person in question is that of seizure of contraband drugs from the vehicle driven by the said accused person which according to the evidence whose recovery was led by the accused person himself.

16. On perusal of the evidence already adduced, copy of such deposition being produced before this Court, it is clear that the accused person is very much aware of the fact that he is in possession of such

illegal contraband drugs inspite of his denial. Therefore, at this juncture, he cannot escaped the fact that prima facie, his complicity in the case is well established as to if he will be convicted or not, would depend on the appreciation of the body of evidence by the Trial Court at the end of the trial. Suffice it to say that for the purpose of an application for grant of bail, this Court is convinced that no case has been made out in this regard.

17. The case of Ram Samujh(supara) cited by the learned AAG, particularly the observation made at para 7 would be relevant to the fact situation and as such, this Court would endorsed the same.

18. In view of the above, this petition is found to be devoid of merit, the same is accordingly dismissed and stands disposed of. No costs.



Judge

Meghalaya
08.12.2023
"D. Nary, PS"