

Serial No. 02
Supplementary List

HIGH COURT OF MEGHALAYA
AT SHILLONG

BA. No. 63 of 2023

Date of Decision: 15.12.2023

Shri. Ujjal Kumar Paul

Vs.

State of Meghalaya & Anr.

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioner/Appellant(s) : Mr. N.M. Mansuri, Adv.

For the Respondent(s) : 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. N.M. Mansuri, learned counsel for the petitioner. Also heard Mr. A.H. Kharwanlang, learned Addl. Sr. GA for the State respondent.

2. The learned counsel for the petitioner has submitted that an FIR was filed on 05.10.2023 before the Officer-in-Charge, Nongpoh Police Station, Ri-Bhoi District, wherein it has been indicated therein that a vehicle suspected to be carrying contraband was intercepted at NH-06 in

front of Nongpoh Police Station, the same being a Night Super Bus bearing registration No. AS 24 AC 1151.

3. On a search being conducted, one unclaimed blue colour bag was found from the bunker of the bus and on checking, it was found that 30(thirty) numbers of different coloured soap cases containing suspected contraband probably heroin were recovered. The contents of the said alleged contraband substances was emptied into one empty polythene bag and the same was weighed, the weight coming to about 0.930 grams, and after deducting the weight of the polythene bag, the same came to about 0.921 grams. The police then apprehended three suspected persons and a police case was registered as Nongpoh P.S. Case No. 115 (10) 2023 under Section 21(c)/29 of the NDPS Act and investigation was launched.

4. It is also the submission of the learned counsel that the petitioner who is the driver of the said bus was arrested with no evidence of his being involved in the alleged offence, inasmuch as, the petitioner is the bus driver not connected with what goes on in the said bus as regard the passengers and since the alleged contraband substance was found from the overhead bunker of seat No. 28 most probably, the same belongs to the passenger of the said seat No. 28, however, the police have led off all the passengers and have arrested only the petitioner and the co-driver and

a handyman of the said bus.

5. The learned counsel has reiterated that since the alleged seizure was not made from the possession of the petitioner herein, therefore, nothing can be attributed to the petitioner as far as the alleged offence is concerned.

6. The second limb of argument advanced by the learned counsel is that the FIR and the subsequent forwarding report filed by the Investigating Officer before the competent authority, has time and again indicated that the total weight of the suspected contraband is 0.921 grams and as such, the quantity seized is a small quantity under the relevant provision of the NDPS Act, particularly Section 21. The rigors of Section 37 therefore would not be applicable as far as the prayer for grant of bail in the case of the petitioner is concerned.

7. The third limb of argument advanced by the learned counsel is that the manner in which the sampling was carried out at the time when the alleged suspected contraband was seized is a clear violation of the relevant rules, inasmuch as, in the FIR itself, it was indicated that the *“The suspected contraband was emptied from the soap cases into one empty polythene bag and the same was weighed and the weight of the suspected contraband is 0.930 grams. The total weight of suspected*

contraband after deducting the weight of polythene bag is 0.921 grams.”

The manner in which the sampling was done is a clear violation of the relevant standing order 1/89, which standing order was issued pursuant to Section 52A of the NDPS Act, 1985 and the provision of Rule 10 under Chapter III of the Narcotic Drugs and Psychotropic Substances (Seizure, Storage, Sampling and Disposal) Rules, 2022, wherein Rule 10(1) provides that:

“10. Drawing the samples. – (1) One sample, in duplicate, shall be drawn from each package and container seized.”

Since the procedure was not followed, therefore, on this count too, the petitioner is entitled to be enlarged on bail.

8. Reference is made to the case of Laxman Thakur v. State (Govt. of NCT of Delhi), wherein vide order dated 14.12.2022 passed in Bail Application No. 3233/2022, the Hon’ble High Court of Delhi in an application for bail has enlarged the accused on bail, taking into consideration that the sampling of the seized contraband goods was not done as per the relevant rules, which procedure is a requirement of law, the same being confirmed by the Hon’ble Supreme Court in the case of Union of India v. Bal Mukund and others reported in (2009) 12 SCC 16. On this ground alone, the Hon’ble High Court of Delhi has granted bail,

opining that the rigors of Section 37 of the NDPS Act will not be applicable. In view of the submission made hereinabove, the learned counsel has submitted that the petition may be allowed and the petitioner may be enlarged on bail with any conditions as deem fit and proper to be imposed by this Court.

9. Per contra, Mr. A.H. Kharwanlang, learned Addl. Sr. GA has submitted that a reference made to the alleged seizure, that is, 0.921 grams was a mistake committed by the Investigating Officer which has been acknowledged by the Court of the learned Special Judge (NDPS), Ri-Bhoi District, Nongpoh in its order dated 14.11.2023 on an application for bail preferred by the petitioner herein and the other co-accused. The learned Special Judge in the said order had observed that the Investigating Officer was called for explanation and he has stated before the court that mistakenly he had shown the net weight of the contraband as 0.921grams which should have been shown as 0.921 kilograms. In the same order, it was also observed that as per the order of the learned Judicial Magistrate First Class, 5 grams of sample was drawn, which clearly indicates that, if the contraband is less than 1 gram, the same could not have been done so. Therefore, the clarification as to the actual weight of the seized contraband substance has been done so before a competent authority no

less than before the Special Court, NDPS.

10. The learned Addl. Sr. GA has also submitted that in cases of these kind involving the provisions of the NDPS Act, be it seizure of intermediate quantity or commercial quantity, this Court has more often than not taken the view that the presence and danger of contraband substances or narcotic drugs circulating within the State does not augurs well for the well-being of the citizen, particularly the younger generation who are susceptible to be lured into consumption of such illegal substances which will in turn result in addiction and complications both physically and mentally. Reference is also made to the case of Smti. Sabitri Chettri @ Kali Chettri v. State of Meghalaya, wherein vide order dated 08.12.2023 passed in BA. No. 61 of 2023, this Court at para 13 of the same has referred to the case of Union of India v. Ram Samujh and another reported in (1999) 9 SCC 429 at para 7 and has opined that the menace of drugs has to be eradicated from our society in whatever means possible, though the same should be done in accordance with law. It is therefore prayed that this petition may be dismissed as devoid of merit.

11. This Court has given due consideration to the submission made and has also taken into account the submission advanced by the learned counsel for the petitioner as regard the weight of the seized contraband

substances. Though, the records would show that an amount of 0.921 grams (net) has been seized and sample taken accordingly, the explanation of the learned Addl. Sr. GA referring to a related order of the learned Special Judge in this matter, would found favour with this Court, inasmuch as, it is, but logical that, if suspected contraband substances have been seized contained 9(nine) soap cases, by no stretch of the imagination can the accumulative contents of all the 9(nine) soap cases weight only about 0.921 grams. It is incumbent upon the Investigating Officer to clarify this point in course of investigation.

12. Be that as it may, this Court is convinced that the seizure could not have been 0.921 grams, but perhaps more than that. As to the manner in which the process and procedure of the sampling of the alleged seized contraband substance is concerned, the submission of the learned counsel for the petitioner has substance, but that is not the only ground that this Court could look into at this point of time. Evidence has to be led to prove this point.

13. With deep respect to the authorities cited, notwithstanding the fact that the same are valid under the circumstances, this Court would maintain that the provision of Section 37 NDPS Act would be applicable as far as this instant case is concerned and under such circumstances, this

Court is not convinced that the petitioner, prima facie, is innocent of the offence alleged against him. It is also brought to the notice of this Court that the process of investigation is still ongoing.

14. In view thereof, this Court finds that there is no merit in this case, the same is accordingly dismissed and stands disposed of. No costs.

Judge

Meghalaya
15.12.2023
"D. Nary, PS"

