

**THE HIGH COURT OF MANIPUR
AT IMPHAL****Crl. A. No. 4 of 2023**

Khwairakpam Romio Singh, aged about 54 years,
S/o (L) Kh. Budhi Singh, a resident of Nambol Awang
Leikai, P.O. & P.S. Nambol, Bishnupur District,
Manipur – 795132 (now in Manipur Central Jail,
Sajiwa)

...Appellant

-Versus-

The State of Manipur represented by the
Commissioner/Addl. Chief Secretary (Home),
Government of Manipur, having its office at Manipur
Secretariat South Block, P.O. & P.S. Imphal, Imphal
West, Manipur, Pin Code : 795001.

.... Respondent

BEFORE
HON'BLE THE CHIEF JUSTICE MR. SIDDHARTH MRIDUL

For the Appellant :: Mr. M. Gunedhor, Adv.

For the Respondent :: Mr. RK Umakanta, PP

Date of Hearing and
Reserving Judgment
& Order :: **23.02.2024**

Date of Judgment & Order :: **14.06.2024**

JUDGMENT AND ORDER
(CAV)

1. Khwairakpam Romio Singh, the appellant (hereafter the appellant) assails the impugned judgment and order dated 8th of February, 2023 passed by the learned Special Judge (ND&PS), Bishnupur, Manipur in Special Trial (ND & PS) Case No. 4 of 2015 whereby the appellant was convicted under Section 21(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (ND&PS Act in short) as well as the order of sentence dated 13th February, 2023 sentencing him for 15 years R.I. with a fine of Rs. 1,00,000/- (Rupees One Lakh) only failing payment of which he was sentenced to undergo further rigorous imprisonment of 6 (six) months; whilst granting him the benefit of the provisions of Section 428 of the Criminal Procedure Code, 1908 (hereinafter Cr.P.C. in short).

2. The case of the Prosecution is that the complainant namely, S.I. Th. Ibotombi Singh, O.C., Special Intelligent Unit (S.I.U.) received a special report that one person was selling Number 4 (Heroin Powder) near Lainingthou Khoriba Hill at I.V. Road, Nambol. The complainant along with the police party rushed to the said location after completing formalities from the S.P. Imphal East and found one person lurking there in a suspicious manner and holding one polythene bag.

3. With the help of the police party, the complainant stopped the appellant and asked him about his identity and about the polythene bag he was holding in his right hand.

4. The appellant identified himself as aforementioned and stated that the polythene bag belongs to him.

5. The complainant informed the appellant that the latter was suspected for possessing Number 4 (Heroin Powder) and also informed him whether he would like the search of his body and belongings to be conducted before the Magistrate or a Gazetted Officer or any independent witnesses as he had the right in law so to opt and require.

6. The appellant thereupon stated that he may be searched before any independent witness at the very spot i.e. Lainingthou Khoriba Hill at I.V. Road, Nambol.

7. Accordingly, the complainant called upon two persons, namely, 1) Shri Nongmaithem Robindro Singh, 28 years, S/o N. Ibotombi Singh of Top Moirang Kampu Makha Leikai and 2) Kamei Aching, 56 years, S/o late K. Paoling of Langol Laimanai who were at the spot and residing in the nearby area and thereafter conducted the body search of the appellant as well as his belongings in

presence of the said witness; whilst simultaneously preparing option for search under Section 50 of the ND&PS Act.

8. The search of the polythene bag having mixed colour (black, white, green, red and yellow), led to the discovery of one transparent plastic packet containing Number 4 (Heroin Powder) with a marking as "Sunflower with a symbol (picture) and with a marking of one Kg and 90%" which was covered with a piece of old newspaper. On weighing the same by using the police weighing scale, it was found weighing "1,050 gms." (one thousand and fifty grams) including the weight of the receptacle container and the same was marked as "A". Out of the said marked 'A', two 5 gms (five grams) each of Number 4 (heroin powder) i.e. one for original and other for duplicate samples were extracted. The said two samples were marked as "A-1" and 'A-2' respectively. The two samples of Number 4 (heroin powder) and the remaining powder i.e. marked as 'A' weighing 1,040 gms were put in three separate envelopes. weighing 1040 gms which were put in three separate envelopes, packed and sealed in the presence of the aforesaid witnesses.

9. The appellant was thereafter arrested and appended his signatures on the three separate envelopes aforementioned in the presence of the said witnesses and the latter also put their

signatures on the said three envelopes. The appellant along with the seized articles i.e. original and duplicate samples of Number 4 heroin powder were brought to Nambol Police Station and handed over to OC/Nambol PS for taking further necessary legal action accordingly.

10. Further, the seized Number 4 heroin powder was re-seized on the complainant's production by the I.O. of the case.

11. Upon completion of the investigation, a Charge Sheet No. 2/2008 dated 17th June, 2015 was submitted against the appellant for the alleged commission of the offences punishable under Section 21(c) ND&PS Act.

12. The Charge Sheet, *inter alia*, relevantly stated as follows :-

"During the course of investigation visited the spot and a rough sketch map of the P.O. is drawn with index. Examined the Complainant and the seizure witnesses. The statement of the Complainant is fully corroborated with the O.E. Some portion of the seized heroin powder was examined by the expert of FSL Pangei and gave the result as positive test of the heroin. The investigation reveals that there is a prima facie evidence to charge against the accused person u/s 21(c) ND & PS Act. So, the accused person is sent up to the Court of law to stand his trial under the aforesaid section of law.

Hon'ble Judge is therefore prayed to kindly fixed a date of hearing at an early date against the accused person u/s 21 (c) ND & PS Act."

13. Vide order dated 13th February, 2017, a Charge Sheet under Section 21(c) of the ND& PS Act was framed against the appellant in the following terms :-

"After due consideration of the facts and records of the prosecution case, I am satisfied that there is prima facie material for presuming that the Accused Person has committed that the alleged crime. Hence, this court has ascertained that there exists ground for framing charge against the said accused person under Section 21(c) of ND & PS Act"

14. The Prosecution, in order to prove its case, produced the following 6 (six) witnesses :-

- (i) P.W. No. 1 – Irom Bikram Singh
- (ii) P.W. No. 2 – Thokchom Ibotombi Singh
- (iii) P.W. No. 3 – Oinam Iboton Singh
- (iv) P.W. No. 4 – Nongmaithem Robindro
- (v) P.W. No. 5 – Soraisam Joychandra Singh.
- (vi) P.W. No. 6 – Ashem Chaoba Singh

15. The Prosecution further exhibited the following documents/articles :-

- (i) Ext. P/1 - Re-seizure memo dated 01-10-2004.
- (ii) Ext. P/2 - O.E. of the case.
- (iii) Ext. P/3 - Weighing and seizure memo dated 01-10-2004.
- (iv) Ext. P/4 - Duty of searching officer for conducting the suspected person dated 01-10-2004.
- (v) Ext. P/5 - FIR.
- (vi) Ext. P/6 - Source report.
- (vii) Ext. P/7 - Go-down receipt dated 01-10-2004.
- (viii) Ext. P/8 - Rough sketch map.
- (ix) Ext. P/9 - Index of the rough sketch map.
- (x) Ext. P/10 - Option for searching dated 01-10-2004.
- (xi) Ext. P/11 - Forwarding letter dated 31-10-2005.
- (xiii) Ext. P/12 - Examination report being no. 86-CH/2004 FSL (ND & PS)
- (a) Ext. M.O.-1 – Paper envelope marked as ‘A’ containing 1040 grams of Heroin powder.
- (b) Ext. M.O.-2 – Envelope marked as ‘A2’ containing remnant returned from the Director, FSL, Pangei.
- (c) Ext. M.O. -3 – Envelope marked as ‘A1’ containing 5 gm of Heroin powder (original)
- (d) Ext. M.O.-4 – A piece of old newspaper.
- (e) Ext. M.O.-5 – A bag having mixed colour (black, white, green, red and yellow)

16. On conclusion of the examination of the Prosecution's witnesses, the appellant's statement was recorded under Section 313 Cr.P.C.

17. During the said examination before the trial court, the appellant answered all the questions put to him, either in the negative or by stating that he “does not know” except for the following :-

“Q7. It is also in the evidence of the P.W. No. 2 namely Thokchom Ibotombi Singh (complainant) that Ext. P/4 is the option for search of your (accused) body and belongings and Ext. P/4(2) is your (accused) signature. What do you have to say?

Ans: I deny. I put my signature on a blank paper at the police station situated at Imphal East district.

Q13. It is also in the evidence of the P.W. No. 2 namely Thokchom Ibotombi Singh (complainant) that you (accused) were thereafter arrested. What do you have to say?

Ans: It is true that I was arrested on that day but I do not know those persons who have arrested me.

Q14. It is also in the evidence of the P.W. No. 2 namely Thokchom Ibotombi Singh (complainant) that you (accused) and the said two local witnesses appended your respective signatures on the said three envelopes. What do you have to say?

Ans: I put my signature in blank papers. I do not know others.

Q16. It is also in the evidence of the P.W. No. 2 namely Thokchom Ibotombi Singh (complainant) that Ext. P/3 is

the seizure list prepared by him and Ext. P/3(1) is your (accused person's) signature. What do you have to say?

Ans: I put my signature whatever they have said but in blank papers.

Q17. It is also in the evidence of the P.W. No. 2 namely Thokchom Ibotombi Singh (complainant) that you (accused) along with the seized articles were taken and handed over to the O.C, Nambol P.S. for further necessary action. What do you have to say?

Ans: It is true that I was handed over to the O.C, NBL. PS. but I do not have any idea about the alleged seized articles.

Q34. It is also in the evidence of the P.W. No. 3 namely Oinam Iboton Singh (1st I.O. of the case) that on 02-10-2004, you (accused) were produced before the Special Judge (ND&PS), Imphal with a prayer for 6 days police remand and the prayer was allowed. What do you have to say?

Ans: It is true.

Q68. Do you have anything more to say in c/w the present Trial case?

Ans: About 18 years back, when I was passing the IV Road near Nambol Khoriphaba foothill, I was kidnapped by about 5 persons and thereafter, I do not know what had happened.

Q69. Do you like to produce any defence witness ?

Ans: I will give defence witnesses.

The accused produced two defence witnesses inclusive of himself as follows :

- (i) D.W. No. 1 - Khwairakpam Romio Singh
(the accused himself).
- (ii) D.W. No. 2 - Ningthoujam Gobin Singh.

18. Having heard the learned Special PP for the State as well as Mr. P. Premchand Singh, learned counsel for the appellant and considered the oral as well as the documentary evidence and material placed before the Court, the Special Judge, ND & PS concluded that the Prosecution had been able to prove beyond reasonable doubt that the appellant was guilty of having committed the offence punishable under Section 21 (c) ND&PS Act and resultantly convicted him vide order dated 13.02.2023 for the unauthorized possession of 1050 gms of Number 4 (heroin powder).

19. Vide the order of sentence dated 13th February, 2023 the appellant was sentenced to undergo rigorous imprisonment for a period of 15 (fifteen) years with a fine of Rs. 1,00,000/- (Rupees one Lakh) only relying on the Supreme Court case reported in **CRIMINAL APPEAL NO. 1457 OF 2021 : Mohd. Zahid Vs State through NCB** supra within a period of 5 years from the date of order

of sentence, failing which he had to undergo further rigorous imprisonment of 6 months.

20. Mr. Gunedhor, learned counsel, appearing on behalf of the appellant would vehemently urge that the appellant's right to be searched before the Magistrate or a Gazetted officer was not communicated to him by the complainant before conducting the search of the former's person thereby violating the provision of Section 50 of the ND & PS Act and that therefore, the appellant's conviction was manifestly erroneous. In other words, it is contended that, S.I. Thokchom Ibotombi Singh i.e. the complainant, never informed the appellant of his right to be body searched in the presence of a Magistrate or a Gazetted officer and consequently the latter never gave his consent to the former to search his body and belongings at the spot in the presence of local witnesses in place of being searched in the presence of a Magistrate or a Gazetted officer.

21. The solitary contention urged on behalf of the appellant does not come to his aid, inasmuch as, the clear and un rebutted deposition of PW No. 2 clearly brings out as follows :-

“On 01-10-2004 at about 1:30 pm, I received a special report that one person was trying to sell out Number 4 (Heroin powder) near Lainingthou Khoriphaba Hill on I.V.

road, Nambol while I along with my party were staying at my office. I along with my police party rushed towards the said location after taking formalities from S.P., Imphal East and found one person standing in a suspicious manner by holding one polythene bag near the hillside of Lainingthou Khoriphaba Hill on I.V. road. I then stopped him and asked about his identity and also enquired about the polythene bag which he was holding in his right hand. The accused identified himself as Khwairakpam Romio Singh, aged about 40 years, S/o (L) Budhi Singh of Nambol Awang Leikai and also said that the polythene bag belongs to him. I then informed the accused that he was suspected for possessing Number 4 (Heroin powder) and also asked him whether he would like to conduct his body search along with search of his belongings before a Magistrate or a Gazetted Officer or any independent witnesses. To which the accused replied that he may be searched before any independent witnesses at that very spot i.e. near Lainingthou Khoriphaba Hill on I.V. road, Nambol. Accordingly, I conducted body search of the accused along with his belongings by calling upon two persons from the nearby area to be witnesses of the body search and the belongings of the accused by preparing option for search u/s 50 ND & PS Act.”

22. The un rebutted testimony of PW No. 2 is further corroborated by the testimony of PW No. 4 who deposed as follows :-

“Nongmaithem Robindro, aged about 45 years, S/o N. Ibotomba, a resident of Top Moirang Kampu Makha Leikai and A/P Thangmeiband Hijam Leikai, District Imphal West.

My particulars are stated above. I am a goldsmith by profession.

I know the accused person who is now in the dock.

On 01-10-2004, at about 3:00 pm, while I was along the IV road of Nambol near the western side of Lainingthou Khoiriphaba foothill, one police personal who identified himself as SI Ph. Ibotombi Singh, the then O.C., Special Investigation Unit (SIU) and his police party stopped one person who was holding one bag in his right hand. The person identified himself as Khwairakpam Romio Singh, S/o Kh. Budhi Singh of Nambol Awang Leikai. The said SI Ibotombi Singh asked for Romio that he was suspected for possession of Heroin powder and further asked him whether he would like conduct his body search and belongings before a Magistrate or a Gazetted Officer or any independent witness(es). Then, he (Romio) replied that his body and his belongings might be searched before any independent witness at the very spot.

Thereafter, the said SI Ibotombi Singh conducted check/search of the bag belonging to the said Romio (the said bag was a mixed colour of black, white, green, red and yellow) in presence of I myself and one Kamei Aching, S/o (L) K. Paoling of Langol Laimanai. On opening the said bag, found one transparent plastic packet containing Heroin No. 4 powder. The said plastic packet was marked

as “Sunflower” with one symbol. The said plastic packet was covered by a piece of newspaper. On weighing, it was found of 1050 gram including the weight of the container and it was marked as ‘A’. From the said 1050 gm, the said SI took out 5 gm each of Heroin powder for original and duplicate sample respectively. After taking out the 5 gm each from the said 1050 gm, 1040 gm was remaining. The said and 1040 gm and 5 gm each was put in separate envelopes and packed and sealed and marked as ‘A’, ‘A1’ & ‘A2’ respectively. I myself and the said Kamei Aching put our signatures on the envelopes. Then the SI Ibotombi Singh prepared a weighing and seizure list dated 01-10-2004 at 2:30 pm at near Lainingthou Khoiriphaba Ching on I.V. Road for the seizure of : (i) On transparent plastic packet marking as SUNFLOWER with SUNFLOWER symbol containing No. 4 powder, (ii) A piece of old newspaper, (iii) One polythene bag having mixed colour (black, white, green, red and yellow) in presence of two witnesses. I and Kamei Aching put our signatures on the said weighing and seizure list and Kh. Romio Singh also put his signature on the said weighing and seizure list.

The said S.I. Ibotombi Singh also prepared a duty of searching officer for conducting of suspected person under Section 50 ND&PS Act dated 01-10-2004 place – near Lainingthou Khoiriphaba Ching on I.V. Road. I and Kamei Aching also put our signatures on the said duty of searching officer for conducting of suspected person under Section 50 ND&PS Act and the accused Kh. Romio Singh also put his signature on the same.

An option for searching dated 01-10-2004 place – near Lainingthou Khoiriphaba Ching on I.V. Road was also prepared by the S.I. Ibotombi in our presence. I and Kamei Aching also put our signatures on the said option for searching and the accused Kh. Romio Singh also put his signature on the same.”

23. It was also urged, *albeit* without conviction, on behalf of the appellant that the weighing scale on which the heroin number 4 powder was purportedly weighed was not produced before the trial court.

24. Having heard learned counsel appearing on behalf of the appellant as well as upon consideration of the evidence produced on behalf of the Prosecution, the following are self-evident :-

- i) that the appellant was found standing in a suspicious manner whilst holding one polythene bag near the hill side of Lainingthou Khoiriphaba Ching on I.V. Road, Nambol on the 1st October, 2004;
- ii) that the complainant upon receipt of a special report, rushed to the spot and asked the appellant about his identity as well as about the polythene bag, the latter was holding in his right hand;

- iii) that the appellant identified himself as Khwairakpam Romio Singh and also stated that the polythene bag belongs to him;
- iv) that the complainant then informed the appellant that the latter was suspected for possessing Number 4 heroin powder and also informed him whether he would like to his body search as well as the search of his belongings to be conducted before the Magistrate or a Gazetted Officer or any independent witnesses;
- v) that the appellant replied that he may be searched at the very spot before any independent witnesses;
- vi) that the complainant conducted the body search as well as the search of the polythene bag belonging to the appellant in the presence of two witnesses from the nearby area;
- vii) that the said polythene bag having mixed (black, white, green, red and yellow) led to the discovery of one transparent plastic packet containing Number 4 (Heroin Powder) with a marking as “Sunflower with a symbol (picture) and with a marking of “one Kg and 90%” which was covered with a piece of old

newspaper. On weighing the same by using the police weighing scale, it was found weighing "1,050 gms." (one thousand and fifty grams) including the weight of the container and the same was marked as "A". Out of the said marked 'A', two 5 gms (five grams) each of Number 4 (heroin powder) i.e. one for original and other for duplicate samples were extracted. The said two samples were marked as "A-1" and 'A-2' respectively. The two samples of Number 4 (heroin powder) and the remaining powder i.e. marked as 'A' weighing 1,040 gms were put in three separate envelopes. weighing 1040 gms which were put in three separate envelopes, packed and sealed in the presence of the aforesaid witnesses.

- viii) that the appellant was thereafter arrested and appended his signatures on the three separate envelopes in the presence of the said witnesses who also put their signatures on the said three envelopes. The appellant along with the seized articles i.e. original and duplicate samples of Number 4 heroin powder were brought to Nambol Police Station and handed

over to OC/Nambol PS for taking further necessary legal action accordingly;

- ix) that the seized Number 4 heroin powder was re-seized on the complainant's production by the I.O. of the case;
- x) that, upon completion of the investigation, a Charge Sheet No. 2/2008 dated 17th June, 2015 was submitted against the appellant for the alleged commission of the offences punishable under Section 21(c) ND&PS Act;
- xi) that the testimony of PW No. 2 has been fully corroborated by the testimony of PW No. 4 establishing that 1050 gms of Number 4 heroin powder was seized from the possession of the appellant in the presence of two witnesses of which PW No. 4 was one;
- xii) that PW No. 4 also identified the signatures of the other seizure witness namely Kamei Aching;
- xiii) that the report of the Forensic Science Laboratory (FSL), Pangei Manipur proved by Soraisam Joychandra Singh, Director of Forensic Laboratory,

Manipur PW No. 5 established that the substance seized from the appellant “gave positive test for heroin”;

- xiv) that the appellant did not dispute the expert opinion rendered by PW No. 5 nor report of the FSL being Ext. P/12 No. 86-CH/2004 FSL (NDPS) dated 31st October, 2005;
- xv) that the appellant who entered the dock as DW No. 1 himself deposed that he had put his signature on Ext. P-3, Ext. P-4 and Ext. P-10 and Ext. P-14 and further deposed that he was arrested by the police personnel from Lainingthou Khoriba Hill at I.V. Road, Nambol on 1st October, 2004; the appellant also testified that Ext. M.O.-5 is the polythene bag seized from him by the police personnel at the time of his arrest upon seizure of number 4 heroin powder from his possession;
- xvi) that DW No. 2 namely, Ningthoujam Gobin Singh also deposed during his cross-examination that the appellant was arrested by the police from near Lainingthou Khoriba Hill on the 1st October, 2004.

25. In view of the foregoing discussion, I find myself in complete agreement with the finding arrived at by the learned Special Court that, the Prosecution has been able to prove beyond reasonable doubt that the appellant committed the offence punishable under Section 21(c) of the ND&PS Act.

26. Therefore, I am of the view that the impugned judgment and order dated 08.02.2023 and order and sentence dated 13.02.2023 respectively suffer from no infirmity so as to warrant any interference in appeal by this Court.

27. The appeal being devoid of merit is accordingly dismissed and the orders dated 08.02.2023 and 13.02.2023 respectively are hereby upheld.

28. Copy be sent to the accused; Superintendent, Central Jail, Sajiwa for information and compliance.

29. Announced in the open court on 14.06.2024.

CHIEF JUSTICE

FR/NFR

Sushil