

**IN THE HIGH COURT OF MANIPUR
AT IMPHAL**

BAIL APPLICATION NO. 25 OF 2024

Miss Korimayum Ruksana @ Ruksana Rahman, aged about 23 years, D/o (Late) Sikander Ali, a resident of Lilong Haoreibi Turel Ahanbi Dam, P.O. & P.S. Lilong, District – Thoubal, Manipur A/p Hatta Near Oil Pump, P.O. & P.S. Porompat, District – Imphal East, Manipur.

.... Petitioner

- Versus -

Officer-in-Charge, Nambol Police Station, District – Bishnupur, Manipur.

.... Respondent

**B E F O R E
HON'BLE MRS. JUSTICE GOLMEI GAIPHULSHILLU**

For the petitioner : Mr. H. Chandrakumar, Advocate
Ms. L. Ashapriya, Advocate

For the respondent : Mr. Y. Ashang, Public Prosecutor

Date of hearing : 30.07.2024

Date of Judgment &
Order : **14.08.2024**

JUDGMENT & ORDER
(CAV)

[1] Heard Mr. H. Chandrakumar and Ms. L. Ashapriya, learned counsels appearing for the petitioner and Mr. Y. Ashang, learned PP appearing for the respondent.

[2] The present application has been instituted on behalf of Miss Korimayum Ruksana @ Ruksana Rahman under Section 439 of the CrPC read with Section 37 of the ND & PS Act, 1985 read with Section 482 of the CrPC with the following prayer:

- (i) Admit the petition;
- (ii) Release and enlarge the petitioner on bail in the referred FIR Case No. FIR No. 15(4)2024 NBL-PS, U/S 21(b)/60(3)/23 ND&PS Act.

[3] Mr. H. Chandrakumar, learned counsel appearing for the petitioner submitted that on 26.04.2024, the petitioner, while travelling along with her mother namely, Mrs. Wahida Rahaman in an auto-rickshaw for medical treatment of her fractured leg besides routine health check-up of her mother, was apprehended by police personnel of Bishnupur Police Station at Govindagram Makha Leikai near Lai Haraopham at 01:10 p.m. without any jurisdiction, since the alleged place of occurrence falls within the jurisdiction of Nambol Police Station on the allegation that they were in possession of 238 grams of heroin powder which is an intermediate quantity as per

relevant law. On the same day at around 10:30 p.m., they along with driver of the auto-rickshaw at Nambol Police Station were arrested and an FIR being FIR No. 15(4)2024 NBL-PS, U/S 21(b)/60(3)/23 ND&PS Act was registered against them.

On 27.04.2024 at around 05:30 p.m., they were produced before the Ld. Duty Magistrate (JMFC, Bishnupur) along with 2(two) other persons at her residence at Nambol Phoijing Awang and the petitioner was remanded to police custody till 03.05.2024.

In this regard, the learned counsel appearing for the petitioner submitted that since the petitioner was produced before the Ld. Duty Magistrate after the lapse of 24 hours, the arresting authority/investigating authority violates the law as mandated by Section 57 of the CrPC and Article 22(2) of the Constitution of India.

[4] The learned counsel appearing for the petitioner, further, submitted that on 03.05.2024, since the petitioner was again produced before the Ld. Special Judge (ND & PS), Bishnupur by the Investigating Officer for seeking police custody, the petitioner was produced again on 06.05.2024. The remand objection filed by the petitioner was treated as bail petition and accordingly, an objection was called by the said Ld. Special Judge from the prosecution fixing the date of hearing as 13.05.2024. In the meantime, the petitioner was remanded to judicial custody on the same day i.e. 06.05.2024. However, since the Investigating Authority did not submit the report,

the bail petition could not be heard on 13.05.2024 and the same was deferred on 15.05.2024.

Vide order dated 16.05.2024 passed in Cril. Misc. (B) Case No. 24 of 2024, the remand objection filed by the petitioner which was treated as bail petition was rejected by the Ld. Special Judge (ND & PS), Bishnupur. The operative portion of the said order is extracted herein below:

"9. In these circumstances, I am of the view that Ruksana, in connivance and collusion with her mother and with common intent, engaged the driver of the Auto Rickshaw and other co-accused namely Ajitkumar and Maheshwar having prima-facie case of conscious possession of contraband drugs of Heroin powder while carrying and transporting in an Auto-Rickshaw on 26.04.2024. therefore, this bail application is rejected."

Therefore, the petitioner was subjected to rigorous custodial interrogation for 11 (eleven) days and she was languishing in jail since 06.05.2024.

[5] Mr. H. Chandrakumar, learned counsel appearing for the petitioner submitted that a similarly situated co-accused namely, Yumnam Ajitkumar Singh was released on bail. However, the releasing order could not be obtained since the same was neither furnished nor allowed to be obtained formally because the form for applying certified copy was refused to be received/accepted on the ground that the only concerned petitioner and respective lawyer representing the him/her can apply and obtain copies. Another co-accused was also released on bail by the Ld. Special Judge (ND & PS), Bishnupur.

[6] Furthermore, the learned counsel appearing for the petitioner contended that even though the petitioner was arrested on 26.04.2024 at around 01:10 p.m., the date and hour of occurrence was mentioned and reflected in the FIR as 26.04.2024 at 11:40 a.m. and the arrest was made only at 04:00 p.m. of the same day.

The alleged contraband substance was also seized from the auto-rickshaw, not from the possession of the petitioner. The auto-rickshaw was not boarded by the petitioner and her mother on reserve service but as normal passengers. Again, the so-called compliance of Section 50 ND & PS Act, 1985 is a hoax as the said Gazetted Officer namely, Laishram Khogen Singh, MPS in whose presence the body search was conducted is a Sub-Divisional Police Officer of Bishnupur flagrantly violating the said provision rendering the arrest and detention illegal.

[7] The learned counsel appearing for the petitioner submitted that the petitioner has no knowledge conscious or unconscious of the presence of the alleged contraband substance in the passenger auto-rickshaw they boarded. Neither the arresting authority nor the investigating authority complies mandatory provision of ND & PS Act in respect of search, arrest and seizure.

In the circumstances, the present application has been instituted on the following grounds:

- (a) There is a reasonable ground for believing that the petitioner is not guilty of the offence.
- (b) The petitioner seeks bail on the ground of parity as one co-accused has already been released on bail.
- (c) The petitioner is also a student.
- (d) The petitioner is not likely to commit any offence while she is on bail, if released on bail.
- (e) The petitioner shall not hamper or temper evidence.
- (f) The petitioner shall not abscond.
- (g) The arrest and detention is illegal as it squarely goes ultra vires of ratio laid down by the Hon'ble Supreme Court's landmark case of ***State of Punjab v. Baldev (AIR 1999 SC 2378)***.

[8] Mr. Y. Ashang, learned PP appearing for the respondent submitted that counter affidavit has been filed whereby mentioning that upon receiving reliable information at around 10:30 a.m. about the movement/exchange of Narcotic & Psychotropic substances somewhere in the general area of Govindagram under Wangoi Sub-Division, under the supervision of Shri Ksh. Ravikumar Singh, IPS, Superintendent of Police, Bishnupur District, frisking/checking was conducted at Govindagram Makhai Leikai near Lai Haraopham at about 11:40 a.m.

During the frisking/checking, one Auto-Rickshaw RE bearing Registration No. MN01AH-9633 and one Alto K10 silver in

colour bearing Registration No. MN06LB-8651 were intercepted at the same time by their police team which were coming from Nambol side on the spot at about 01:10 p.m. Since they could not give convincing reply on asking the purpose for their travel, further verification was conducted.

On verification, the police team felt the need to make a search of the persons as well as the vehicles. On the search conducted at about 02:40 p.m. by lady police personnel, from the possession of Mrs. Wahida (mother of the petitioner), 2(two) cartoon boxes were found inside her floral printed carry bag and on opening the same, 3 (three) nos. of plastic pouch and another 17 (seventeen) nos. of plastic pouch suspected to be No. 4 Heroin power were found respectively weighing 238 grams approximate in total of 20 (twenty) nos. of plastic pouches. One Samsung keypad mobile phone, one partly broken Samsung mobile handset, one Xiaomi mobile handset, one Pan Card in the name of Wahida, one SBI master card in the name of Wahida and one Amway Card were also found from her possession. On the body search of Ms. Ruksana by lady police personnel, one mobile handset was found.

[9] The learned PP further submitted that on spot questioning, it was revealed that the two drivers had conspired for trafficking the illicit items/drugs. On the body search of the two drivers i.e. Auto-Rickshaw and Alto K10, many articles were found from their

possession including driving Licenses, Pan Cards, Debit Cards, Mobile handsets, Cashes etc. at about 03:20 p.m. and 03:30 p.m. respectively.

The seized 20 (twenty) nos. of plastic pouches suspected to be No. 4 Heroin were packed and marked as X in presence of the Gazetted Officer, Shri Laishram Khogen Singh, MPS, SDPO, Bishnupur at the spot. Accordingly, the petitioner, her mother, drivers of the two vehicles and a personnel of NAB-PS (5 in total) were arrested along with the seized articles at 03:55 p.m., 04:00 p.m., 04:05 p.m. 04:10 p.m. and 04:15 p.m. and handed over to the Police Station at 10:30 p.m. of the same date for further investigation.

[10] Furthermore, the learned PP submitted that the investigation was conducted. Upon investigation, it was revealed that the accused Mrs. Wahida (mother of the petitioner) is a habitual offender and also inter-state drug trafficker. She was previously involved in different cases. On interrogation of the undernoted accused person, she admitted that the drug was seized from her mother and she had accompanied her mother many times in this illegal business.

On the same day i.e. 26.04.2024 at around 12:30 p.m. the undernoted accused person along with her mother came towards Nambol Langpok along Tiddim road on the seized auto rickshaw of their associate i.e. Md. Abarar (driver of the auto rickshaw). At around

12:20 p.m. they reached at Langpok area and met with co-accused (Yumnam Ajitkumar) came on the seized Alto K10 car bearing Regn. No. MN06LB-8651, silver in colour. There, her mother got down nearby a small shop on the pretext of buying a bottle of water and collected the seized drug from one Md. Babu of Kwakta, Bishnupur by giving Rs. 94,000/- (Rupees ninety four thousand) only in cash as advance. After collecting the drugs, they went to the residence of the accused Pebam Maheshwor who is a personnel of NAB-PS guided by accused Ajitkumar. There, they met accused Pebam Maheshwor and made plan for carrying the drug up to Lilong. Then, the accused Ajitkumar and Maheshwor instructed to her mother and they will cover up to Lilong in the pretext of the staffs of NAB-PS. Thus, they came out for Lilong on their vehicles led by accused Ajitkumar and Maheshwor by the seized Alto car. After driving around half minute, the Auto-Rickshaw was detained/stopped by a team of Bishnupur Police Station including women police constable at Govindagram Awang Leikai area near Lai Haraopham. As soon as they were stopped by the police team, her mother shouted that, they are associate with NAB team who were going in front of them on Alto car. Immediately, the Alto car was stopped and detained the accused Ajitkumar and Maheshwor for verification. On searching their body and belongings by observing legal formalities, the complainant found two cartoon box containing 20 plastic pouch by suspected Heroin No. 4 from the

possession of her mother. On weighing, it was found to be 238 grams (including the weight of plastic pouch). Subsequently, they were arrested and seized the drug from the possession of her mother along with many other relevant items.

On the interrogation of the accused petitioner, she admitted that the drug was seized from her mother and she had accompanied her mother many times in this illegal business. On 26.04.2024 at about 12:30 p.m. the undernoted accused person (Ruksana) came with her mother (Wahida) up to Nambol, Govindagram (PO) by pretending for repairing her leg and helped her mother's illegal drug trafficking on one auto-rickshaw aforementioned. On checking the G-pay accounts and bank account statement of the accused Ruksana and the driver of the auto-rickshaw, it was also ascertained that ***they had done some peculiar/suspected transaction between them and she had also done all the transaction of money of drug trafficking and selling in her account.***

It is clear that the examination report of the seized exhibits was collected on 03.06.2024 from the Director, Directorate of Forensic Sciences, Manipur, Pangei vide Memo No. 31/10/88-DFS (CHEM) dated 24th May, 2024 and the expert opined the examination report and gave positive response to the test for Heroin.

Accordingly, the present petitioner is a ***conscious abettor*** of the offence alleged to have been committed in collusion

with her mother and other accomplices whose identities are yet to ascertain. All the formalities of the case was completed and also submitted charge sheet to the concerned Court under Charge Sheet No. 02NBL-PS/2024, dated 15.06.2024.

[11] The learned PP Mr. Y. Ashang contradicted the submissions made above in regard to the facts of the case and the same were extracted herein above. With the above submission, the learned PP relied upon the decision of the Hon'ble Supreme Court passed in ***Union of India v. Rattan Mallik @ Habul [(2009) 2 SCC 624]*** and it has been held that –

"11. Section 37 of the NDPS Act, as substituted by Act 2 of 1989 with effect from 29-5-1989 with further amendment by Act 9 of 2001 reads as follows:

"37. Offences to be cognizable and non-bailable- (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),-

(a) every offence punishable under this Act shall be cognizable;

(b) no person accused of an offence punishable for offences under Section 19 or Section 24 or Section 27-A and also for offences involving commercial quantity shall be released on bail or on his own bond unless-

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

(2) The limitations on granting of bail specified in clause (b) of sub-section (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974), or any other law for the time being in force on granting of bail."

12. It is plain from a bare reading of the non obstante clause in Section 37 of the NDPS Act and sub-section (2) thereof that the power to grant bail to a person accused of having committed offence under the NDPS Act is not only subject to the limitations imposed under Section 439 of the Code of Criminal Procedure, 1973, it is also subject to the restrictions placed by clause (b) of sub-section (1) of Section 37 of the NDPS Act. Apart from giving an opportunity to the Public Prosecutor to oppose the application for such release, the other twin conditions viz. (i) the satisfaction of the court that there are reasonable grounds for believing that the accused is not guilty of the alleged offence; and (ii) that he is not likely to commit any offence while on bail, have to be satisfied. It is manifest that the conditions are cumulative and not alternative. The satisfaction contemplated regarding the accused being not guilty, has to be based on "reasonable grounds".

13. The expression "reasonable grounds" has not been defined in the said Act but means something more than prima facie grounds. It connotes substantial probable causes for believing that the accused is not guilty of the offence he is charged with. The reasonable belief contemplated in turn, points to existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence (vide Union of India v. Shiv Shanker Kesari²). Thus, recording of satisfaction on both the aspects, noted above, is sine qua non for granting of bail under the NDPS Act.

14. We may, however, hasten to add that while considering an application for bail with reference to Section 37 of the NDPS Act, the court is not called upon to record a finding of "not guilty". At this stage, it is neither necessary nor desirable to weigh the evidence meticulously to arrive at a positive finding as to whether or not the accused has committed offence under the NDPS Act. What is to be seen is whether there is reasonable ground for believing that the accused is not guilty of the offence(s) he is charged with and further that he is not likely to commit an offence under the said Act while on bail. The satisfaction of the court about the existence of the said twin conditions is for a limited purpose and is confined to the question of releasing the accused on bail.

15. Bearing in mind the above broad principles, we may now consider the merits of the present appeal. It is evident from the afore-extracted paragraph that the circumstances which have weighed with the learned Judge to conclude that it was a fit case for grant of bail are: (i) that nothing has been found from the possession of the respondent; (ii) he is in jail for the last three years, and (iii) that there is no chance of his appeal being heard within a period of seven years. In our opinion, the stated circumstances may be relevant for grant of bail in matters arising out of conviction under the Penal Code, 1860, etc. but are not sufficient to satisfy the mandatory requirements as stipulated in clause (b) of sub-section (1) of Section 37 of the NDPS Act.

16. Merely because, according to the learned Judge, nothing was found from the possession of the respondent, it could not be said at this stage that the respondent was not guilty of the offences for which he had been charged and convicted. We find no substance in the argument of learned counsel for the respondent that the observation of the learned Judge to the effect that "nothing has been found from his possession" by itself shows application of mind by the learned Judge tantamounting to "satisfaction" within the meaning of the said provision. It seems that the provisions of the NDPS Act and more particularly Section 37 were not brought to the notice of the learned Judge.

17. Thus, in our opinion, the impugned order having been passed ignoring the mandatory requirements of Section 37 of the NDPS Act, it cannot be sustained. Accordingly, the appeal is allowed and the matter is remitted back to the High Court for fresh consideration of the application filed by the respondent for suspension of sentence and for granting of bail, keeping in view the parameters of Section 37 of the NDPS Act, enumerated above. We further direct that the bail application shall be taken up for consideration only after the respondent surrenders to custody. The respondent is directed to surrender to custody within two weeks of the date of this order, failing which the High Court will take appropriate steps for his arrest."

[12] The learned PP submitted that it has been clearly mentioned that **the petitioner is found to be conscious abettor of trafficking contraband substance in collusion with her mother and accomplices** and that as per official document received

from the Controller of Examination, Dhanamanjuri University, Imphal vide letter No. 23/9/DMC-KAUSHAL/2020-2021 (Misc), dated 14.05.2024, the petitioner was not appearing the Semester Examination of Bachelors of Vocational Education (OTT) which had started from 16.06.2024 as she had already passed the 1st Semester in 2020 (December). This shows that the petitioner is not approaching before this Hon'ble Court with clear hand. Hence, the contentions are denied. As regards fracture of leg, it is not supported by any document(s) issued by competent authority and as such, cannot be taken judicial cognizance for want of authenticity.

[13] Heard the learned counsels for the parties at length.

[14] It is an admitted position of the fact that the present petitioner, her mother and three other accused were arrested on 26.04.2024 in connection with the present FIR case for seizure of the contraband drug. It is also an admitted position of the fact that the seized contraband drug is not a commercial quantity. But, the same is intermediate quantity. The seized articles were seized from the petitioner's mother, as per the learned PP, the petitioner is found to be conscious abettor of trafficking contraband substance in collusion with her mother and accomplices. As per the learned PP, on checking the G-pay accounts and bank account statement of the accused Ruksana and the driver of the auto-rickshaw. As per the learned PP, the driver and the present petitioner had done some

peculiar/suspected transaction between them and she had also done all the transaction of money of drug trafficking and selling in her account. Further, as per the learned PP, the present petitioner is a ***conscious abettor*** of the offence allegations made by the petitioner in her application were answered by the prosecution in their objection affidavit.

[15] After going through the allegation made above by the learned PP, this Court is of the view that as of now, the respondent state failed to make a prima facie case against the present accused as these allegations cannot bring home the direct involvement of the present accused/petitioner in the present case and her prior involvement in such offences. On top of that, the present accused/petitioner is a young student studying at D.M. College as well as an O.T.T. trainee at Langol View and Research Institute Private Limited. These submissions made by the learned counsels are taken into account and the same is reproduced hereunder:

(i) The release of similarly situated co-accused namely, Yumnam Ajitkumar.

(ii) The learned counsel's plea that the seized contraband drug was weighing only 238 gram quantity which is an intermediate quantity as per relevant law and as the quantity seized falls under intermediate quantity, the relevant section which is to be applied in the instant

case is Section 439 CrPC read with 482 of the same Code but not under Section 37 of ND & PS Act.

(iii) The learned counsel also draws the attention of this Court to Section 21 of the ND & PS Act, the same is reproduced hereunder:

"21. Punishment for contravention in relation to manufactured drugs and preparations. Whoever, in contravention of any provision of this Act or any rule or order made or condition of licence granted thereunder, manufactures, possesses, sells, purchases, transports, imports inter-State, exports inter-State or uses any manufactured drug or any preparation containing any manufactured drug shall be punishable,-

- (a) where the contravention involves small quantity, with rigorous imprisonment for a term which may extend to lone year), or with fine which may extend to ten thousand rupees, or with both;*
- (b) where the contravention involves quantity, lesser than commercial quantity but greater than small quantity, with rigorous imprisonment for a term which may extend to ten years and with fine which may extend to one lakh rupees;*
- (c) where the contravention involves commercial quantity, with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years and shall also be liable to fine which shall not be less than one lakh rupees but which may extend to two lakh rupees:*

Provided that the court may, for reasons to be recorded in the judgment, impose a fine exceeding two lakh rupees.

(iv) If at all assuming but not admitted that the petitioner commits the crime it will fall under Section 29(b) and as such, the petitioner is liable to be released

on bail. With the submission and in support of his case, the learned counsel relied upon the Hon'ble Supreme Court's judgment and order passed in ***State of Punjab v. Baldev (AIR 1999 SC 2378)*** in relation to his plea that the detention of the petitioner is illegal as it squarely goes *ultra-vires* of ratio laid down in the landmark case of the Hon'ble Supreme Court. The learned counsel for the petitioner further relied upon the Hon'ble Supreme Court's judgment passed in ***Bhagirathsinh Judeja v. State of Gujarat (AIR 1984 SC 372)*** and the relevant portion of the judgment is extracted hereunder:

"If there is no prima facie case there is no question of considering other circumstances but even where a prima facie case is established the approach of the court in the matter of bail is not that the accused should be detained by way of punishment but whether the presence of the accused would be readily available for the trial or that is likely to abuse the discretion granted in his favour by tempering with the evidence."

[16] Further, the learned counsel's reference to the decision of the Hon'ble Bombay High Court passed in ***Suaibo Ibow Casamma v. Union of India [1994 (1) BOM CR 65]*** and it was held that Article 22(2) of the Constitution of India and Section 57 of the Code of Criminal Procedure, 1973 has overriding effect on Section 37 of the ND & PS Act have all supported the case of the accused/petitioner.

[17] After giving due consideration of the case, as narrated above, this Court is of the considered view that the Ld. Special Judge, (ND & PS), Bishnupur passed the impugned without application of mind in both facts and law. Accordingly, the impugned order dated 16.05.2024 of the Ld. Special Judge, (ND & PS), Bishnupur is set aside.

Accordingly, the accused/petitioner is released on bail on her furnishing surety bond of Rs. 1,00,000/- (Rupees one lakh) only to the satisfaction of the Ld. Special Judge (ND & PS), Bishnupur.

[18] Send an extract copy of this order to the Court of Ld. Special Judge (ND & PS), Bishnupur.

JUDGE

FR/NFR

Bipin