

LUCY
GURUM
AYUM

Digitally signed
by LUCY
GURUMAYUM
Date:
2024.09.23
15:13:45
+05'30'

Item. 35

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

Bail Appln. No. 26 of 2024

Taslima

...Petitioner/s

- Versus -

Officer in Charge, NAB P.S Manipur

...Respondent/s

B E F O R E

HON'BLE MRS. JUSTICE GOLMEI GAIPHULSHILLU

19.09.2024

Heard Mr. S. Jibon, learned counsel appearing for the petitioner and Mr. Samarjit Hawaibam, learned PP appearing for the respondent.

The present bail application has been filed by the petitioner u/s 439 read with Section, 167 of the Cr.P.C praying for releasing the accused no. 3 (Md. Kudus) on bail in connection with Spl. Trial Case No. 36 of 2023 [Ref:- FIR Case No. 5(3)2023 NAB P.S. U/s 21(C)/25/29 & 60(3) NDPS Act.] with the following prayers;

- "i) to admit this bail petition,
- ii) to call report from the Officer-in-charge, NAB Police station, Imphal in connection with the FIR No. 5(3)2023 NAB P.S. u/s 21(c)/25/29 & 60(3) NDPS Act.
- iii) to call report from the Special Judge (NDPS), Manipur in connection with the Spl. Trial (NDPS) Case No. 36 of 2023.
- iv) to peruse the same.
- v) to pass an order for enlarging the accused on bail on Merit or on Statutory Bail in connection with the Spl. Trial (NDPS) Case No. 36 of 2023 Ref:- FIR No. 5(3)2023 NAB P.S. u/s 21(c)/25/29 & 60(3) NDPS Act".

The case of the petitioner is that she is the wife of the accused no. 3 namely, Md. Kudus who is now in Judicial Custody in connection with FIR No. 5(3)2023 NAB P.S. u/s 21(c)/25/29 & 60(3) NDPS Act. The accused Md. Kudus was arrested on 14.03.2023 by the police of NAB PS along with 5 other co-accused. The present accused is at Sl. No. 3. Since then the accused no. 3 is in judicial custody.

Grounds taken herein by the petitioner are that;

1. The charge sheet was filed incomplete against the charged 3(three) accused persons; and
2. Delay in trial;
3. The accused is innocent of the charges levels against him as the only allegation made against him is he is suspected to have knowledge in carrying some contraband drug items.

In the counter affidavit filed by the respondent by objecting the bail application of the petitioner by narrating the prosecution story and narrated thus;

".... After reaching North AOC, the team of NAB-PS team started looking for independent witnesses and found two independent witnesses who were the staffs of inter-state bus counter, North AOC. In the meantime, SDC (HQ), Lamphel also arrived and joined with them. The complainant along with her police team of NAB-PS proceeded to the bus bir No. MNO04P-0844 which was parked on the road side opposite to Manipur Public Service Commission, Imphal along with two independent witnesses and the Magistrate. They (complainant) introduced themselves as officers' personnel of NAB-PS, Executive Magistrate and witnesses to the individuals who were inside the bus. The driver of the bus, co-driver and one helper of the

bus were indentified. On verification, the driver, the co-driver and one helper of the bus were identified themselves as Md. Ibungo (36) S/o Md. Khamad Ali, r/o Sangaiyumpham Part-I Nungphou Mamang Leikai, Md. Atao Rahaman (27) s/o Md. Abdul Malik, r/o Yairipok Tuliha Mayai Leikai, Imphal East and Md. Kudus (23) s/o (L) Jalaruddin, r/o Sangaiyumpham Mairan Khun, PS & Dist.-Thoubal respectively. On further verification, they stated that the contraband items were kept inside the chamber of right side body below the windows of the vehicle and the contraband items were to be handed to Md. Nawaz Sharif and Md. Zakir Hussain of Lilong Leihoukhong, the owner of the vehicle. As such, in presence of the Executive Magistrate and Independent witnesses and at the instance of the three individuals, the chamber of the right side body below the windows near seat number 29 and 30 was opened by using screw driver and found 17 soap cases containing suspected Heroin powder in transparent polythene pouches and marked as 1, 2, 3, 4.....and 17 for identification. Further, on the checking another chamber of the right side body below the windows near seat number 21 and 22 and found 16 soap cases One brown colour wallet containing one Aadhar Card in the name of Md. Kudus, one HDFC ATM Card b/card No. 6521660249994482 and Rs. 140/- (1x100, 1x20, 2x10) were seized on production by Md. Kudus at 2.50 pm by observing formalities. Further the said three individuals were arrested by observing formalities at 3.00 p.m., 3.05 pm and 3.10 pm respectively. Hence the arrested persons along with seized items are handed over for taking necessary legal actions against them."

Perused the application with counter affidavit filed by the respondent and also perused the charge sheet submitted by the I.O of the case and on perusal of the contents of the charge sheet, it was mentioned that **"Further the Hon'ble court is prayed to kindly allow me to submit supplementary charge sheet against the co-accused persons if any clue/evidence comes in light in future"**. On perusal of these lines it is seen and evident that supplementary charge sheet as mentioned in these lines is not for the present accused i.e accused no. 1, 2 and 3 but for the co-accused who were absconding at the moment.

In these facts and circumstances, the ground taken by the learned counsel for the petitioner that the charge sheet filed against the present accused i.e. 1, 2 & 3 are incomplete, has no merit.

And for the delay in trial, it is an admitted fact that the FIR was registered on 14.03.2023 and thereafter, arrested the accused involved in the present case and charge sheet was filed by the I.O of the case before the Trial Court on 12.07.2023 after completing the investigation. On 16.1.2024 charge were framed against accused no. 1, 2 & 3 and till now 2(two) PWs have been examined. In the charge sheet, the no. of cited witnesses are only 8(eight) and out of these, 2(two) witnesses have already been examined.

Learned counsel for the petitioner cited a series of Hon'ble Supreme Court's Judgments regarding the delay in trial. But, the fact of the case in hand and the process taken herein with the facts and circumstances in all the cited cases were not at same footing as such not applicable. On perusal of the process taken by the I.O. from the date of registration of the FIR till now, it is evident that there is no lapses on the part of the prosecution. As such, delay of trial as alleged is not applicable in the present case.

For point no. 3, this Court is of the view that for the consideration of this issue, perusal of facts as narrated in the case is required for this matter, the narration made by the Trial Court while framing charge against the 3 accused at para no. 14 & 15 are reproduced herein below;

"14. So far as the three accused persons (accused no.1, 2 and 3) namely i) Md. Ibungo (36), ii) Md. Atao Rahaman (27) iii) Md. Kudus(23) are concerned, they were allegedly found as the occupants of the bus, which is apparently an interstate bus and travelling together as driver, co-driver and helper of the bus and that a commercial quantity of about 416 gms of suspected heroin powder was allegedly recovered from secret modified chambers of the said bus. The alleged fact that the two accused persons No.2 and 3 had no knowledge about the said contraband cannot be believed at this stage. There is nothing at this stage to show even on face value that they might not have the knowledge of the existence of the contraband drugs inside the bus. If it is the case of the accused persons that they have no knowledge about the said contraband drugs, then it is for them to prove the said absence of their knowledge by adducing evidence during the trial.

15 In my opinion, at this stage, there are sufficient material showing prima facie case for framing charge for commission of the offences under Section 21(C) r/w S:29 of the ND&PS Act as against the said three accused persons (accused no.1, 2 and 3). Hence the prayer made by Ld. Counsel for accused No.2 and 3 for discharging them from the case is hereby rejected."

On perusal of the para 14 & 15 of the order mentioned above, the Ld. Trial Court, while framing of charge of the accused involved in the case, considered the facts of the case and elaborated well and after considering these facts the Trial Court come to the conclusion that a prima facie for framing charge of offences under Section 21(C) r/w S: 29 of the ND&PS Act as against the said three accused persons (accused no.1, 2 and 3).

After going through all these facts, this Court is of the considered view that necessary trial of the present accused no. 1, 2 & 3 is called for proving the case. Accordingly, it is observed that the plea of the accused/petitioner as innocent to the charges leveled against him proved futile at this stage.

Taking into consideration of all these facts as discussed above, the present bail application filed by the petitioner has no merit. Accordingly, the present application is dismissed.

As requested by the learned counsel for the petitioner, the petitioner is given liberty to approach this Court, if the Trial Court failed to conclude the trial expeditiously and accordingly directed the learned Trial Court to conclude the examination of PWs as well as trial expeditiously as far as possible.

JUDGE

Lucy