

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

BAIL APPLICATION NO. 30 OF 2023

Shri Prince Kumar, aged about 29 years, S/o Late Sh.
Tribhuvan Ram of Village Khojapur, P.O. Fadanpur,
District-Ghazipu, Uttar Pradesh-233001 and A/P
residing at C/o Rina, Railway Club, Raja Ali Road, PO
& PS Tinsukia, Assam-786602.

.... Petitioner

- Versus -

Intelligence Officer, NCB, Imphal, Manipur-795140.

.... Respondent

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

For the petitioner	:	Mr. L. Seityandra, Advocate
For the respondent	:	Mr. Darakishore, Senior PCCG
Date of hearing	:	14.12.2023
Date of order	:	18.01.2024

JUDGEMENT & ORDER
(CAV)

[1] Heard Mr. L. Seityandra, learned counsel appearing for the petitioner and Mr. Darakishore, learned senior PCCG assisted by Miss Niana, learned counsel appearing for the respondent at length.

[2] The present Bail Application has been filed under section 439 of the Code of Criminal Procedure, 1973 praying inter-alia for releasing the Accused/Petitioner on bail during the pendency of NCB

Crime No. 11/NCB/Imp/2022 dated 28/11/2022 u/s 8(c) r/w S. 21(c) ND&PS Act, in connection with the order dated 26.06.2023 passed by the Ld. Special Judge (ND&PS), Manipur, at Lamphelpat in Cril. Misc. (B) No. 122 of 2023 by necessary/appropriate bond(s), surety/sureties as deem fit for the satisfaction of the Hon'ble Court.

The prayer of the application reads as follows:

"(i) to call for the reports/records concerned.

(ii) to release the Accused/Petitioner on bail under section 439 of Code of Criminal Procedure, 1973 during the pendency of the above said NCB crime in connection with the order dated 26.06.2023 passed by the Ld. Special Judge (ND&PS), Manipur, at Lamphelpat in Cril. Misc. (B) No. 122 of 2023 Ref: NCB Crime No. 11/NCB/Imp/2022 dated 28/11/22 u/s 8(c) r/w S. 37 ND&PS Act by furnishing necessary/appropriate bond(s), surety/sureties as deem fit for the satisfaction of the Hon'ble Court.

(iii) to pass any other appropriate order(s) as the Hon'ble Court deems fit and proper for the ends of justice."

[3] The grounds for filing the present application are as follows :

A) There is non-compliance of Section 50 of the ND&PS Act which is a mandatory requirement.

B) The present petitioner/accused person is entitled for equality under Article 14 of the Constitution of India.

C) The Hon'ble Supreme Court has clearly observed that in case Section 50 of the ND&PS Act is not complied with the applicant is entitled to bail.

D) The present accused expressed his desire to be searched before a Gazetted Officer ad Sh. Suresh Kumar Singh, Superintendent NCB, Imphal Was requested to participate in the search proceedings.

It is submitted that the SP, NCB is an interested person as it is mentioned in the Charge Sheet that the written source report was submitted to him by SI Thangtinlen Haokip on 28.11.2022.

E) The Final Compliant/Charge Sheet has already been filed implying that investigation about the said case is over so, it is no more necessary to detain the petitioner in custody.

F) The accused/petitioner is languishing in the judicial custody for almost a year and due to the present turmoil of ethnic clashes in the State of Manipur the trial is probably not to conclude in the near future.

[4] The learned senior PCCG appearing for the respondent has filed objection to the present application as thus:

"1. The Respondent herein vehemently oppose and deny all the averments and contentions in the instant application made by the petitioner. Save and except those which are specifically admitted herein. Anything that has not been specifically admitted is hereby denied. Nothing shall be deemed to be admitted for want of specific traverse. The Respondents reserve their right to file a detailed reply and submissions at a subsequent stage.

2. With regard to the averments made in Paras no. 1 to 3 of the bail application, the answering respondents have no comment.

3. With regard to the averment made in para no. 4 of the bail application, it is submitted before the Hon'ble High Court that, from the bare perusal of the charge sheet and voluntary statement of all the accused, it is evidently clear that the petitioner has been a habitual offender who has been involving in illicit trafficking of contraband substance for the past may years, all the allegation of his involvement are substantiated by the voluntary statement of co-accused. Furthermore, it is also found that the accused was supplying the contraband substances to many of his associates such as; Mrs. Urmila, Dip Das, amongst other, the same is mentioned in the Chargesheet which is not repeated herein for the sake of brevity. Moreover, the process of investigation is still underway in order to trace the whereabouts and chain of operation of all the accomplices of the accused, and as such, the petitioner being the kingpin, releasing him on bail can temper the evidence and witness, which will frustrate the whole process of investigation.

4. With regard to the averment made in para no. 5 of the bail application, the answering respondent have no comment.

5. With regard to the averment made in para no. 6 of the bail application. It is submitted before the Hon'ble High Court that, the accused was caught red-handed for a possession of 1.05 Kg of Heroin and 01 Kg of Methamphetamine, the same allegation is affirmed by the 2 (independent witness) namely; Sh. Shaikhom Haridas and Sh. Laishram Nilkamal and are

substantiated by the statement of co-accused P. Khrishna and Bhanwar Singh Rathor therefore, considering that the accused being a main member of the syndicate in illicit trafficking, and examining the prima facie evidence available on record, the Ld. Special Judge (ND&PS) Manipur has rightly rejected the bail application of the accused.

It is also imperative to mentioned herein that, obtaining CFSL report is beyond the reach of Investigating Officer and the purpose of filing supplementary charge sheet is to corroborate the evidence with the investigation and is a matter of trial and cannot be gone into at this stage, therefore, non-filing of FSL report cannot be the ground to grant bail, the same principle was held in a plethora of cases.

It is also further submitted that the petitioner is not entitled to grant of bail under section 167(2) Cr.P.C. for non-filing of the FSL report along with the charge sheet, although the police are not permitted to sent an incomplete report under section 173(2) of the Code, yet the investigation except for the report of an expert like the Serologist or Scientific Officer and Chemical Examiner is complete. Therefore, the Magistrate is empowered to take cognizance of the offence on a police report which does not include the expert's opinion hence, under section 173 of the Code there is no mandate that a police report must enclose the document purporting to be a report under the hand of a Government scientific expert. In the present cases, as cognizance of the offences taken by the Magistrate was proper and valid, no order releasing the petitioners on bail under section 167(2) of the Code was required to be passed.

The settled law also persists in the view that non filing of FSL report with the charge sheet does not fall within the realms of Section 173(2) of the Cr.P.C. so as to consider it as "incomplete report". In the present case although FSL report has not been filed, however, the charge sheet was already filed on 26.05.2023 within the time period as per law. Further, the amount of quantity recovered from the accused is of commercial nature baring the accused from bail under section 37 of the NDPS Act.

It is also pertinent to mentioned herein that, the Forensic Examination Report issued by Central Forensic Science Laboratory, Directorate of Forensic Science Service, Ministry of Home Affairs, Govt. of India confirming the presence of illegal contrabands has been submitted before the Special Judge, (NDPS), Lamphelpat on 11.08.2023.

6. *With regard to the averment made in para no. 7 of the bail application it is humbly submitted that, merely discharging*

an accomplice does not entitle the kingpin to be discharge on the same ground. The accused alone can still be convicted in accordance with the availability of evidence against the accused under the provision of NDPS. It is true that, an order that 25.08.2023 was passed in Special Trial No. 25 of 2023 by Ld. Special Judge, ND&PS thereby wrongly discharging the two accused namely, Shri P. Krishna @ Mani and Shri. Bhanwar Singh. However, the aforesaid order is erroneous, perverse, and bad in law as it was passed without application of judicial frame of mind despite there are enough prima facie evidence available on record against the two accused. As a result, a Criminal Revision Petition No. 18 of 2023 has been filed before this Hon'ble Court against the aforesaid impugned order dated 25.08.2023 to set aside the same and Notice has been issued returnable by 04.12.2023.

Further, it is also submitted that, whether there are enough evidence available on record to substantiate the allegation against the accused is a matter for the trial court to decide at the stage of trial not at the stage of bail application. Therefore, interference of this court on weighing the evidence by going deep into the probative value of evidence at this stage is highly premature and hence, uncalled.

7. *With regard to the averment made in para no. 7 (a to f) of the bail application. It is humbly submitted that, the accused was arrested by complying all the legal formalities, and as such, there is no question of non-compliance with respect to arrest, seizure and recovery under section 50 of ND&PS Act, the Superintendent NCB namely, Suresh Kumar Singh was very much present. The same compliance report available in para no. 5 of charge sheet (Annexed in Bail Application No. 30 of 2023) is reproduced herein below for your lordship convenience;*

"That, thereafter the suspected person was asked to enter the premises of Manipur State Road Transport Corporation which was just at the distance of 50 meter for safety and security purpose and to conduct search properly as it was not safe and proper to complete the search proceedings on the road side as it was already dark. As instructed the suspected person got ready to go inside the premises of MSRTC. Thereafter, the suspected person namely Prince Kumar was informed that his personal search and search of his luggage would be carried out as per the provisions of section 50 of NDPS Act, 1985. He was also informed about his legal rights that he shall be searched before a Magistrate or a Gazette Officer if he so desire, whereupon he expressed/wished to be searched before a Gazette Officer Thereafter Sh. Suresh Kumar Singh,

Superintendent reached at the MSRTC office at about 1900 hours and personal search of the person namely Prince Kumar was commenced at about 1915 hours in presence of the two independent witnesses during personal search of Prince Kumar on mobile phone, 09 debit cards, Driving license, Aadhar card and one PAN card were recovered from his possession”

It is furthermore submitted that, in case, even if search and seizure was not made in stern compliance therewith, it cannot vitiate the case as it does not affect/goes to the root of the case, it just constitutes a part of procedural law. It is an admitted fact that the contraband illicit substance was recovered from the possession of the accused therefore, all this prima facie evidence available on record cannot be outrightly thrown out by merely questioning the competency of the Gazetted Officer. Nevertheless, all this issue is to be decided at the stage of trial. And as such, the same issue was also not raised before the Special Judge.

8. *With regard to the averment made in para no. 9 to 10 of the bail application. It is humbly submitted that, from the bare perusal of the material available on record, it is evidently clear that, the accused being a part of drug cartel having its operation in different part of India, who have been involve in trafficking of contraband substance for the past many years, releasing the accused on bail without bearing in mind the gravity of the offence, and without considering the fact that, the Respondent is trying hard to further trace the network of all his associates will frustrate the whole process of pending investigation and adversely affect the entire society and the objective of smacking a stringent provision for control of illicit traffic in ND&PS Act will ultimately be defeated”.*

[5] On perusal of record, it is evident that charge sheet has already been filed by the I.O of the case in connection with the case, at Para No. 5 of the present application. The petitioner states that Final Report/Charge sheet, in connection with the case, was filed one day ahead of the expiry/lapse of the statutory period in respect of the accused.

[6] It is admitted fact that the accused is entitled to release on bail after expiry of the statutory period for remand, if the prosecution failed to submit Charge sheet in connection with the case. As per Catena of decisions rendered by the Hon'ble Supreme Court and

in particular in ***Ritu Chhabaria Vs Union of India & Ors. (Writ Petition (Criminal) No. 60 of 2023)***.

[7] Further, in the present case, the prosecution has already filed Charge sheet before the expiry of the statutory period for trial.

[8] During the course of hearing, the learned counsel for the petitioner fervently submitted that during the seizure of the seized article the arresting authority failed to comply with the provision laid down under section 50 of the ND&PS Act, the mandatory provision laid down for seizure under the ND&PS Act.

[9] On the other hand, the learned senior PCCG submitted that from the contention of the Charge sheet filed by the I.O and voluntary statement of the accused, it is evidently cleared that the petitioner has been a habitual offender who has been involving in illicit trafficking of contraband substance.

[10] It is further submitted that the CFSL report is not yet received and the I.O is going to file supplementary charge sheet to corroborate the evidence with the investigation. As such, non-filing of CFSL report cannot be the ground for Bail.

[11] It is further submitted by the learned senior PCCG that the State has already filed Criminal Revision Petition No. 18 of 2023 before this Hon'ble High Court against the impugned order dated 25.08.2023 discharging of the 2(two) accused namely Shri P Khrishna @ Mani and Shri. Bhanwar Singh and the same is pending before this Hon'ble High Court.

[12] It is further submitted by the learned senior PCCG that there is no question of none compliance with respect to arrest, seizure and recovery under section 50 of ND&PS Act. The same compliance

report mentioned in Para no. 7 of the objection filed by the respondent is reproduced herein below:

"7. That, with regards to the averment made in para no. 7 (a to f) of the bail application. It is humbly submitted that, the accused was arrested by complying all the legal formalities, and as such, there is no question of non-compliance with respect to arrest, seizure and recovery under section 50 of ND&PS Act, the Superintendent NCB namely, Suresh Kumar Singh was very much present. The same compliance report available in para no. 5 of charge sheet (Annexed in Bail Application No. 30 of 2023) is reproduced herein below for your lordship convenience;

"That, thereafter the suspected person was asked to enter the premises of Manipur State Road Transport Corporation which was just at the distance of 50 meter for safety and security purpose and to conduct search properly as it was not safe and proper to complete the search proceedings on the road side as it was already dark. As instructed the suspected person got ready to go inside the premises of MSRTC. Thereafter, the suspected person namely Prince Kumar was informed that his personal search and search of his luggage would be carried out as per the provisions of section 50 of NDPS Act, 1985. He was also informed about his legal rights that he shall be searched before a Magistrate or a Gazette Officer if he so desire, whereupon he expressed/wished to be searched before a Gazette Officer. Thereafter Sh. Suresh Kumar Singh, Superintendent reached at the MSRTC office at about 1900 hours and personal search of the person namely Prince Kumar was commenced at about 1915 hours in presence of the two independent witnesses during personal search of Prince Kumar on mobile phone, 09 debit cards, Driving license, Aadhaar card and one PAN card were recovered from his possession"

It is furthermore submitted that, in case, even if search and seizure was not made in stern compliance therewith, it cannot vitiate the case as it does not affect/goes to the root of the case, it just constitutes a part of procedural law. It is an admitted fact that the contraband illicit substance was recovered from the possession of the accused therefore, all this prima facie evidence available on record cannot be outrightly thrown out by merely questioning the competency of the Gazetted Officer. Nevertheless, all this issue is to be decided at the stage of trial. And as such, the same issue was also not raised before the Special Judge."

[13] For the sake of convenience, I extract the operative portion of the impugned order of the Ld. Special Judge (ND & PS), Manipur, Lamphelpat dated 26.06.2023 is reproduced as follows:

"8. In my view, the satisfaction of the investigating office and members of the raiding party during seizure of the contraband that what was recovered were Heroin and Methamphetamine on the basis of the field testing using Drug Detection Kit on the spot, which is also documented in the Inventory of Seized Narcotic Drugs, Psychotropic Substances, Controlled Substances and Conveyances under S. 52 A(2) of the ND & PS Act, cannot be doubted at this stage. There are statements of the independent witnesses under Section 67 of the ND & PS Act in this regard. As per record, the IO has already taken steps to obtain the chemical examination report by sending and submitting the exhibits / samples for forensic analysis to Central Forensic Science Laboratory, (CFSL) Kamrup, Assam and the same has already reached the concerned authority / Director of CFSL Kamrup, Assam.

9. In **Rafael Palafox Garcia V. Union of India, 2008 All MR (Cri) 3031**, it was held by the High Court of Allahabad that even though the report of C.A. (Chemical Analyzer) was not filed, it cannot be said that an incomplete chargesheet has been filed and the accused was not entitled for bail under Section 167 (2) of the CrPC. In the said case, it was observed by the HC that the complaint and Panchanama, specifically mention about field testing kit being taken to the spot and samples were tested and result was positive. Similarly, the High Court of Kerala in **Sameer V. State of Kerala on 8 September, 2021**, BAIL APPL. NO 5747 OF 2021 took a view that, as per Section 2(h) of the CrPC, investigation includes all the proceedings under CrPC for collection of evidence conducted by a police officer or by any person (other than a Magistrate), who is authorized by a Magistrate in this behalf and therefore, the investigation includes all the proceedings under the Code for collection of evidence and the investigating officer has already taken proceedings to get the analyst report by submitting requisition before the Court concerned and it has already reached the laboratory and therefore, it cannot be said that simply because the analyst report is not received from the laboratory, the investigation is not complete.

10. In **Tara Singh V. State AIR 1951 SC 441**, it was held that a police report which is not accompanied by the expert opinion is to be held as complete report as long as the witnesses who are acquainted with the circumstances of the case have been examined. In **Kishan Lal V. State 39 (1989) DLT 392**, relying on the above decision of the Apex Court

observed that the argument that for offences under ND & PS Act, the report under Section 173(2) of the Code, which in law was complete, was to be considered incomplete in the absence of the opinion of the expert, was entirely misconceived. It was observed by the Delhi HC in the said case that as far as the expert report was concerned by virtue of Subsection (4) of Section 293 of the Code, any document purporting to be a report under the hand of Director or a Deputy Director of a CFSL or SFSL can be used as evidence in any enquiry, trial or other proceedings under the Code and it was open to the Court where it thinks fit to summon and examine the scientific expert and that under Section 173 CrPC there is no mandate that a police report must enclose the documents purporting to be a report under the hand of a Government scientific expert.

11. In **Navinkumar Pandu Jatot V. State of Maharashtra**, the Bombay High Court on 31st January 2022 (CRIMINAL APPELLATE JURISDICTION BAIL APPLICATION NO. 301 of 2020 with Bail Application Nos. 3505 & 3506 of 2019) after discussing several decision of the various High Court and the Apex Court, held that mere absence of CA/FSL report with the chargesheet would not result in declaring the stipulated time, the question of default bail does not arise.

12. In the facts and case, in the light of aforementioned decisions, it cannot be said that simply because the chemical examination report is not yet received by the IO from the laboratory, the investigation is not complete in as much as so far as the job of the IO for collecting the evidence is concerned, that is over the moment he despatches the material for the opinion expert. The chemical report can be submitted later as and when it is received from the concerned authority of CFSL, Kamrup, Assam.

13. In **Central Bureau of Investigation V. RS. Pai and Another AIR 2002 SC 1644**, it was held that the scheme of sub-section (8) of Section 173 of CrPC makes it absolutely clear that even after the chargesheet is submitted, further investigation is not precluded, then there is no question of not permitting the prosecution to produce additional documents which were gathered prior to or subsequent to investigation and that in such cases, there cannot be any prejudice to the accused.

14. The facts in **Ritu Chhabaria (supra)** cited by the applicant's counsel were altogether different. In the said case, indisputably, the investigation was in progress, but as the statutory time period to file the chargesheet was coming to an end, the chargesheet was filed clarifying that the investigation was still pending. In such circumstances, the Hon'ble Apex Court took the view that there is no question of filing any

supplementary chargesheet, taking the aid of sub-section (8) of Section 173 of CrPC, as sub-section (8) of Section 173 of the CrPC comes into play only after the investigation is completed and the chargesheet is laid.

15. *The aforesaid decision of Hon'ble Supreme Court is of no avail to the accused in the present case. In **Judgebir Singh @ Jasbir Singh Sarma @ Jasbir & Ors. V. National Investigation Agency** decided on 01/05/2023 in CRIMINAL APPEAL NO. 1012 OF 2023, the Hon'ble SC observed that once a final report has been filed, that is the proof of completion of investigation and if final report is filed within the period of 180 days or 90 days or 60 days from the initial date of remand of accused concerned, he cannot claim that a right has accrued to him to be released on bail for want of filing of sanction order. In the instate case, the final complaint was filed after the entire investigation was purportedly completed except for want of the chemical examination report/expert opinion.*

16. *Therefore, there is not merit in the argument of the applicant's counsel that the final complaint without the chemical examination report is not a complete one.*

17. *There is no basis for grant of bail on the grounds mentioned in the present application in as much as the same had already been considered on merit in the earlier order dated 28/04/2023 in Cril. Misc. (B) Case No. 21 of 2023 of this Court. Further, in the light of the above decisions of the High Courts and the Hon'ble SC, the prayer of the applicant to grant default bail is also rejected.*

18. *The application stands disposed of."*

[14] It is evident that the Ld. Trial Court rightly rejected the bail application as the Trial Court passed the order after discussing all the materials on record with careful conspectus of legal spectrum, juxtaposed with its view on the facts and merit of the case.

[15] Having examined the materials on record, after hearing both the learned counsel for the parties and also after perusal of the impugned order dated 26.06.2023 passed in Cril. Misc. (B) Case No. 122 of 2023 by the learned Special Judge (ND&PS), Manipur, Imphal, there is no ground for releasing the accused on bail as the prosecution has rebutted all the allegations made in the application.

[16] Regarding the non-compliance of Section 50 of the ND & PS Act, the State respondent explained in detail about it at Para No. 7 of the objection affidavit.

[17] Accordingly, the present Bail Application No. 30 of 2023 is dismissed and disposed of. However, the petitioner is given liberty to file a fresh application on other grounds, if desired.

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

JUDGE

FR/NFR

Lucy