

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

BAIL APPLICATION NO. 32 OF 2023

Salauddin, aged about 40 years, S/o Shri Jalaudin,
resident of Village-Madar Nagar, The-baheri, P.O-
Baheri, P.S- Baheri, District-Bareilly, Uttar Pradesh-
243201.

.... Petitioner

- Versus -

The Union of India, represented by the Narcotics
Control Bureau (NCB), through its Intelligence Officer,
Narcotics Control Bureau, Imphal, CPWD Quarters,
Changangei, Kongba Uchekon, 795008, Imphal West,
Manipur.

.... Respondent

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

For the petitioner	:	Mr. S. Worthing, Advocate
For the respondent	:	Mr. W. Darakishore, Senior PCCG
Date of hearing	:	19.01.2024
Date of order	:	08.02.2024

JUDGEMENT & ORDER
(CAV)

[1] Heard Mr. S. Worthing, learned counsel appearing for the petitioner and Mr. W. Darakishore, learned senior PCCG appearing for the respondent at length.

[2] The present Bail Application has been filed under section 439 CrPC, r/w Section 167(2) CrPC & Section 37 ND&PS, Act with a prayer inter-alia for releasing the accused/petitioner on bail.

The prayer of the application reads as follows:

"(i) consider this bail application and call for record/reports from the court below; No. 8/NCB/IMPL/2022.

(ii) enlarge the accused/petitioner on bail with conditions.

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

[3] Briefs of the case:

The accused/petitioner was arrested along with other co-accused by a team of Narcotics Control Bureau (NCB) on 02.06.2022 on the strength of a complaint information dated 01.02.2022 with an allegation of transporting banned contraband (ganja).

The accused/petitioner is a professional driver who is engaged in transporting items such rice, carton scraps, plastic scraps etc. And with his meager earnings, the accused/petitioner runs a family consisting of 6(six) minor children and a wife who is a mere housewife. Since, his arrest on 02.06.2022 till the filling of this instant, petition, the accused/petitioner has been languishing in jail. On 27.02.2023, an application under Section 439 CrPC r/w Section 167(2) was filed before the Hon'ble Court of the Special Judge, ND&PS, Court, Senapati being Cril. Misc. (B) Case No. 26 of 2023 with a prayer to enlarge the accused/petitioner on bail. However, the

same was rejected by the Court of Special Judge (ND&PS), Senapati vide its order dated 17.04.2023.

During the pendency of the Bail Application filed by the accused/petitioner, the Special Public Prosecutor, Narcotics Control Bureau filed an application dated 25.03.2023, praying for extension of time so as to enable the investigation of the newly arrested accused namely Shri M. Jayanta Singh and Shri Livingstone Ngakang and the same was allowed by the Court of the Special Judge (ND&PS), Senapati vide order dated 27.03.2023, thereby vitiating the bail application dated 27.02.2023 filed by the accused/petitioner and rejected the same vide order dated 17.04.2023. Hence, the present petition is filed praying for enlarging the accused/petitioner on bail with conditions as the court may deem fit and proper.

[4] In favour of his case, the petitioner filed the following documents:

1. True copy of the Complaint information dated 01.06.2022. (Annexure – A/1).
2. True copy of the Bail Application dated 27.02.2023. (Annexure – A/2).
3. True copy of the order dated 17.04.2023 passed by the Special Judge (ND & PS), Senapati, Manipur. (Annexure – A/3).
4. True copy of the application dated 25.03.2023 filed by the Union of India for extension of time for investigation (Annexure – A/4).
5. True copy of the order dated 27.03.2023 passed by the Special Judge (ND & PS), Senapati, Manipur allowing extension of time for investigation. (Annexure – A/5).

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

"1. That, at the very outset, 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. That before submitting a para-wise comment, the answering respondent would like to highlight the factual matrix of the case in brief for better appreciation of the case;

I. That, acting on specific information received from a reliable source NCB team proceeded towards Tadubi village of Senapati District on 01.06.2022 at about 1830 hrs. Upon reaching there the team of NCB Imphal in assistance of B Coy 33 Bn. Assam Rifles intercepted a Tata truck bearing registration number UK05CB5915. The driver was the only occupant of the vehicle. Thereafter the said truck was searched at the camp of B Coy of 33 Bn. in presence of two independent witnesses. The truck was loaded with scrap plastic water bottles and scrap cartons card board. Thereafter all the scrap was removed from the truck. While removing the scrap from the truck 19 nos. of nylon sacs were recovered concealed in the middle of the scrap plastic bottles and carton papers. Upon opening all the white color nylon sacs one by one found inside greenish black dried flowering like substance believed to be Ganja. A small amount of the substance was taken out from all the 19 sacs/packets and tested with the Drug Detection Kit available with the NCB team which tested positive for Ganja in all the instances. All the sacs of Ganja were seized subsequently. During search of the truck one broken mobile phone, documents related to the truck as mentioned above were also recovered and seized.

II. That, thereafter, the sacs/packets containing suspected Ganja were marked as P-1 to P-19. Thereafter the weight of all the packets was measure with the digital weighing machine brought by NCB team. The gross weight of all the packets with packing material found to be 1191.2 kg. ON reasonable believe that an offence has been committed u/s 8(c) to be read with section 20(b)(ii)(C) and 25 of the NDPS Act, 1985 (as amended), the recovered 19 packets of contrabands believed to be Ganja were seized u/s 42 of the NDPS Act, 1985 (as amended). ON spot interrogation Salauddin revealed that one another person namely Khan chacha was also accompanying with him and he had all the knowledge of transportation of Ganja who had procured the recovered drugs from Ukhrul. He

further revealed that he had loaded 7.1 ton of plastic scrap and 7015 ton of carton paper scrap from M/s Dilip Kr. Waste Management, Churachandpur, Manipur on 30.05.2022 and in the middle of the scrap he concealed the 19 sacs of Ganja.

III. That, the search cum seizure procedure was completed on 02.06.2022 without causing any damage to any person or property in presence of the two independent witnesses. A search cum seizure list was prepared obtaining signatures of the owner of the seized goods, seizing officer and the two independent witnesses of Assam Rifles staff. Thereafter the accused Salauddin was issued notices u/s 67 of NDPS Act, 1985 on the spot to appear before the NCB Officer for recording his voluntary statement at NCB Imphal office in connection with the seizure of 1191.2 kg of Ganja from the truck bearing registration no. UK05CB5915. Accordingly, Salauddin appeared before NCB officer on 02.06.2022 and tendered his voluntary statement u/s 67 of NDPS Act, 1985 on 02.06.2022 wherein he confessed his involvement in the trafficking of the seized Ganja.

IV. That on the basis of the recovery of contraband, his confessional statements and on reasonable belief that an offence had been committed in violation of provisions of Section 8(c), which attracts penal provisions u/s 20(b)(ii)(C) and 25 of NDPS Act, 1985; Salauddin was arrested on 02.06.2022 & produced before the Ld. Court of Duty Magistrate, Kangpokpi on 02.06.2022.

V. That, during the investigation, Khan chacha and Arun Singha, the middleman who were found to be involved in the present case were arrested and Final Complaint was filed against them also on 28.11.2022 while keeping investigation open for other suspects. In due course, the supplier of the seized Ganja namely M. Jayanta Singh, resident of Imphal and Livingstone Nkagang of Ukhrul, Manipur were also arrested and produced before the Court of Special Judge (ND&PS), Senapati, Manipur on 14.03.2023 and 17.03.2023 respectively.

3. That with regards to the averment made in para no. 1 to 2 of the bail application, the answering respondent has no comments as it is a matter of record.

4. That with regards to the averment made in para no. 3 of the bail application, the answering respondent has no comment which are born out of record and that onus lies on the Petitioner, the rest of the averment made in the paragraph has to be established at the time of trial.

5. That with regards to the averment made in para no. 4 of the bail application, it is humbly submitted that, Letter of intimation of the arrest was sent to the Officer-in-Charge Police Station – Baheri, District Bareilly, Uttar Pradesh regarding the accused Salauddin with request to furnish any criminal antecedent available on record. A subsequent reminder was also sent on 02.11.2022 to Officer-in-Charge Police Station Baheri. However, reply is not yet received from Officer-in-Charge Police Station. The same will be submitted before the Ld. Judge as and when it is received.

6. That, with regards to the averment made in para no.5 to 7 of the bail application, the answering respondent has no comment which are born out of record, the rest of the submission are made in the forgoing para.

7. That, with regards to the averment made in para no. 8 of the bail application, the answering respondent vehemently denies to the averment made therein, it is submitted before the Hon'ble High Court that, the petitioner/accused has unequivocally stated in his voluntary statement recorded under section 67 of NDPS Act that a Ganja will be load in his truck, out of which he will be paid a good amount for consignment and the accused has allowed to conceal the contraband substance after an assurance was given to him not to worry as the co-accused would be moving ahead of his truck to clear the road as on when required. Therefore, the question of unconscious possession is completely out of question.

8. That, with regards to the averment made in para no. 9 to 11 of the bail application, the answering respondent has no comment to be made as it is a matter of record. Except to the averment made therein that the petitioner is not aware of the presence of contraband substance in his truck, the same submission is made in the aforesaid para. Imperatively, the engagement of accused in trafficking the contraband substance was also affirmed by the co-accused Yasin Khan @ Khan Chacha wherein Yasin confessed in his voluntary statement stating that, he concealed the contraband substance after informing the petitioner not to worry as he would be moving ahead of his truck to clear the road as on when required and in return the Petitioner will get a good amount. He also informed that he and the Petitioner Salauddin were working for one person namely Arun Singha resident of Hojai, Assam. Hence, the submission made there are not a good/sufficient grounds in the eyes of law for granting the relief sought for in the Bail Application and as such the Hon'ble Court may be pleased to reject the same.

9. That, with regards to the averment made in para no. 12 of the bail application, it is submitted before the Hon'ble High Court that, from the bare perusal of the factual matrix of the case. It is manifestly clear that the accused was caught in

possession of 1191.2 Kgs of contraband Ganja packed in 19 sacks which was bought in his Tata Truck. 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 including those associates who have been instrumental in trafficking of contraband substance, 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.

10. That, with regards to the averment made in para no. 13 of the bail application, the answering respondent has no comments as it is a matter of record.

11. That, with regards to the averment made in para no. 14 of the bail application, the answering respondent humbly submits that, the accused was caught red-handed for a possession of 1191.2 Kgs of contraband Ganja packed in 19 sacks which was bought in his Tata Truck, the same allegation is affirmed by the 2 (independent witness) namely Sh. Heman Rishanta Singh Rfn/GD and Sh. Sougrakpam Chandra Kumar Meitei Rfn/GD of 'B' Coy Tadubi of 33rd Assam Rifle, and during investigation it was discovered that the accused is a main member of the syndicate in illicit trafficking and further investigation is still going. Therefore, examining the prima facie evidence available on record and considering that the amount of quantity recovered from the accused is of commercial nature bared the accused from acquiring bail under Section 37 of the NDPS Act. Therefore, the Ld. Special Judge (ND&PS) Manipur has rightly rejected the bail application of the accused.

12. That, with regards to the averment made in para no. 15 of the bail application it is humbly submitted that, the I.O submitted the Final Report/Charge-Sheet on 28.11.2022 and the Petitioner filed the bail application on 27.02.2023 only after the charge-sheet has been filed, which extinguished the right of default bail. More so, the order dated 27.03.2023 passed by the Hon'ble Court of Special Judge (ND&PS), Senapati had rightly accepted the application filed by the Respondent, as the Special Judge has unfettered rights under the provision of Section 36-A (4) of NDPS Act, which give the power to grant extension for a period upto 1(one) year.

13. That, with regards to the averment made in para no. 16 of the bail application, it is humbly submitted that, the accused was caught in possession of commercial quantity of contraband substance, this prima facie case or the root of the case is undisputed, and the investigation is still underway to further trace the accused associate. It is imperative to mentioned that, during investigation, besides the availability of complicity of all the accused in voluntary statement, the connivance of all the accused was revealed in analyzing the CDRs of all the numbers, it has been established that there was in regular

contact with each other. There are several calls made among them. Certified copies of the CDRs have been applied from the concerned service providers and the same is yet to be received, the answering respondent craves the leave of this Hon'ble Court to refer the final complaint for detail of the CDRs report as it is not reproduced herein for the sake of brevity. Therefore, interference of this court on weighing the evidence of going deep into the probative value of evidence at this juncture is highly premature and hence, uncalled. All this prima facie evidence available on record cannot be outrightly thrown out and grant bail at this stage.

14. That, with regards to the averment made in para no. 17 of the bail application, it is humbly submitted that, the further investigation of the case is still going on to trace the criminal antecedent of the accused and more so, the release of an accused in NDPS Act cases on bail will send a negative signal to the society. It will be detrimental to the interest of society. The bail cannot be granted merely on the ground that there was no past criminal history at this stage. Pertinently, the letter of intimation of his arrest was sent to the Officer-in-Charge Police Station-Baheri, District Bareilly, Uttar Pradesh in regards to the accused Salauddin with a request to furnish on any available antecedent criminal record. On 02.11.2022 reminder was also sent to Officer-in-Charge Police Station-Baheri. Reply is not yet received from Officer-in-Charge Police Station. The same will be submitted before your Honour as on when receipt.

15. That, with regards to the averment made in para no. 18 to 20 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 involved in trafficking of contraband substance, 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 making a stringent provision for control of illicit traffic in ND&PS Act will ultimately be defeated.

It is pertinent to mention herein that, the Petitioner was found in possession of commercial quantity, his case is hit by bar under section 37 of the NDPS Act which sets a stringent condition on grant of bail to accused found with commercial quantity of drugs, hence, bearing in mind the seriousness of the offences merely one is poor or sole breadwinner of the family cannot be the factor to grant bail. Interest of society must be the prime consideration in the case of offence committed under NDPS Act. Quantity of the substance with which accused was charged shall also be a relevant factor to consider while granting bail.

[6] Perused the application with the affidavit-in-opposition filed by the respondent with documents filed by both the parties also perused the order passed by the Ld. Special Judge (ND & PS), Senapati, Manipur.

[7] During the course of the hearing, the learned counsel for the petitioner fervently submitted that the charge sheet was filed without the expert report of the seizure contraband Ganja. As such, Charge sheet is deemed to be incomplete, because of this the accused is liable to be released on bail.

[8] The learned counsel appearing for the respondent submitted that the Final Report/Charge-Sheet on 28.11.2022 and the Petitioner filed the bail application on 27.02.2023 only after the charge-sheet has been filed, which extinguished the right of default bail. More so, the order dated 27.03.2023 passed by the Hon'ble Court of Special Judge (ND&PS), Senapati had rightly accepted the application filed by the Respondent, as the Special Judge has unfettered rights under the provision of Section 36-A (4) of NDPS Act, which give the power to grant extension for a period upto 1(one) year

[9] The learned counsel for the respondent submitted that the Bail Application of the present petitioner was filed before the Ld. Special Judge (ND & PS), Senapati, Manipur after charge sheet/final report was filed in connection with the case. On perusal of the record, the submission made by the learned counsel found positive. The learned counsel, further, submitted that bunch of the matter relating to ND & PS case which was filed without the expert report of the seizure contraband and the same is still pending before the Hon'ble Apex Court for disposal.

[10] In support of his case, the learned counsel for the respondent handed down the following cases:

1. Special Leave Petition (Criminal) Diary No.(s). 43791/2023 – Pabitra Narayan Pradhan Vs. The State (NCT) of Delhi, Supreme Court of India.

2. Petition(s) for Special Leave to Appeal (Crl.) No(s). 8164 – 8166/2021-Mohd. Arbaz & Ors. Vs. State of NCT of Delhi, Supreme Court of India.

Perused both the order of the Hon'ble Supreme Court.

[11] On perusal of the order of the Ld. Special Judge (ND & PS), Senapati, Manipur, it is evident that the Ld. Special Judge passed the order after hearing both sides with application of mind and also after going through the relevant sections of ND & PS with the series of cases rendered by the Apex Court and rightly rejected the Bail Application filed by the present petitioner.

[12] In view of the facts and circumstances, I find no ground for allowing the petition in the foregoing and hence, the present Bail Application filed by the petitioner is rejected.

[13] Accordingly, the present Bail Application No. 32 of 2023 is dismissed and disposed of. However, the petitioner is given liberty to file fresh bail application on fresh grounds.

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

JUDGE

FR/NFR

Lucy