

**HIGH COURT OF TRIPURA
AGARTALA
B.A. No.74 of 2024**

Shahid Miah on behalf of accused of Jaynal Miah
-----Applicant(s)
Versus
The State of Tripura
-----Respondent(s)

For Applicant(s) : Mr. S. Sarkar, Sr. Adv,
Mr. D. Gope, Adv.
For Respondent(s) : Mr. Raju Datta, P.P.,
Mr. R. Saha, Addl. P.P.

HON'BLE MR. JUSTICE BISWAJIT PALIT

Order

27/11/2024

This bail application under Section 439 of Cr.P.C. is filed for granting release of the accused person-in-custody Shri Jaynal Miah on bail who is lodging in jail in connection with A. D. Nagar P.S. Case No.72 of 2023 under Section 120(B)/212 of IPC and Section 20(b)(ii)(c)/25/29 of NDPS Act, 1985 read with Section 3 of Passport (Entry into India) Act, 1920.

Heard Learned Senior Counsel, Mr. S. Sarkar assisted by Learned Counsel, Mr. D. Gope appearing on behalf of the accused person-in-custody and also heard Learned P.P., Mr. Raju Datta along with Learned Addl. P.P., Mr. Rajib Saha on behalf of the State-respondent.

In pursuance of the earlier order, Learned P.P. has produced the Case Diary.

Taking part in the hearing, Learned Senior Counsel, Mr. S. Sarkar first of all drawn the attention of the Court that in the case at hand from the contents of the FIR, it is not clear that the contraband items was actually seized from the residence of the accused person-in-custody because prosecution in this regard could not submit any

documentary evidence before the Court. Learned Senior Counsel further submitted that since last 240 days the accused is lodging in jail and furthermore, the prosecution in this case has failed to comply with the provision of Section 42(2) of NDPS Act and furthermore, the minor son of the accused person-in-custody is suffering from dengue for which Learned Counsel submitted that the accused may be released on bail in any condition. Since the IO of this case has laid the charge-sheet against the accused-in-custody, Learned Senior Counsel also in support of his submission further submitted that if at this stage if it is not possible to grant regular bail so in pursuance of the judgment of the Hon'ble Delhi High Court reported in **(2016) SCC OnLine Del 6662 (Athar Pervez vs. State)** dated **26.02.2016** he may be released at least on interim bail for the purpose of treatment of his minor son and referred para No.22 of the said judgment:

"22. By its very nature, "interim" bail is a temporary liberation for a fixed period of time. It is a bail on pro-tem basis. [See *Sunil Fulchand Shah v. Union of India:(2000) 3 SCC 409 and Mukesh Kishanpuria v. State of West Bengal:(2010) 15 SCC 154*]. "Interim" bail should not and cannot be a substitute and an alternative for regular bail. It should be granted for the minimal time deservedly necessary."

Learned Senior Counsel also submitted that since the investigation is complete and the IO has laid charge-sheet and the accused himself surrendered before the Court so there is no chance of absconding or to evade from the trial and also there is no chance of tampering evidence on record of the prosecution by the appellant. So, Learned Senior Counsel urged for granting bail to the accused.

On the other hand, Learned P.P., Mr. Raju Datta along with Learned Addl. P.P., Mr. Rajib Saha appearing on behalf of the State-respondent strongly objected the bail application and submitted that this case was registered on 28.12.2023 on the basis of *Suo Moto*

complaint laid by one SI Sankar Das but the accused was found to be absconding and later on he surrendered on 01.04.2024 and since then he is lodging in custody and by this time, the charge-sheet has been submitted by IO within time. So, at this stage there is no scope to release him on bail. Learned P.P. further submitted that the contraband item of commercial quantity was seized from the residence of the accused and another accused was arrested in connection with this case who was later on ordered to be released on bail as per order dated 11.07.2024 passed by Learned Special Judge, Court No.4, West Tripura, Agartala. Learned P.P. in support of his contention referred one citation of this High Court reported in **(2023) SCC OnLine Tri 777(State of Tripura Represented by Ld. Public Prosecutor vs. Mahabul Alam & Ors.)** dated **27.09.2023** in B.A. 23 of 2023 wherein in para No.17 this High Court observed as under:

"17. From the aforesaid enunciations of law on the subject, it is abundantly clear, that the Courts while considering the application for bail must strictly adhere to the two conditions embodied in Section 37 of the NDPS Act, and must record its reason of satisfaction that there are substantial probable causes for believing that the accused is not guilty of committing such offence and that there is no likelihood of repetition of committing such offence by the accused while on bail. It is reiterated that while considering the bail application filed by the accused arrested under the penal provisions of NDPS Act, learned Special Judges should be confined within the limits embodied in Section 37 of the NDPS Act. Procedural violations, if any, shall be taken into consideration during the course of trial, and not at the stage of consideration of bail application."

Referring the same, Learned P.P. submitted that if there is any procedural irregularities in that case the same may be considered only during the stage of 'trial' not during the stage of hearing on bail application.

Learned P.P. also relied upon another citation of the Hon'ble Apex Court reported in **(2024) SCC OnLine SC 1751(State of**

Meghalaya vs. Lalrintluanga Sailo and Anr.) dated

16.07.2024 wherein in para Nos.8, 9 and 10 observed as under:

"8. Thus, the provisions under Section 37(1)(b)(ii) of the NDPS Act and the decisions referred supra revealing the consistent view of this Court that while considering the application for bail made by an accused involved in an offence under NDPS Act a liberal approach ignoring the mandate under Section 37 of the NDPS Act is impermissible. Recording a finding mandated under Section 37 of the NDPS Act, which is sine qua non for granting bail to an accused under the NDPS Act cannot be avoided while passing orders on such applications.

9. The materials on record would reveal that earlier Smt. X was enlarged on bail by the High Court as per order dated 27.06.2023 in connection with FIR No.22(03)2023, involving the quantity of 55.68 grams of Heroin, despite the opposition of the public prosecutor, taking note of her being HIV positive. In the said order it is stated thus: -

30. Accordingly, on this ground alone, the application for grant of bail is hereby allowed.

10. The subject FIR viz., FIR No. 06(02)23 under Section(s) 21(c)/29 of the NDPS Act, would reveal that the quantity of the contraband involved is 1.040 kgs of heroin. The impugned order granting bail to accused-Smt. X, dated 29.09.2023 would reveal, this time also, the bail was granted on the ground that she is suffering from HIV and conspicuously, without adverting to the mandate under Section 37(1)(b)(ii), NDPS Act, even after taking note of the fact that the rigour of Section 37, NDPS Act, calls for consideration in view of the involvement of commercial quantity of the contraband substance. When the accused is involved in offences under Section 21(c)/29 of NDPS Act, more than one occasion and when the quantity of the contraband substance viz., heroin is 1.040 Kgs, much above the commercial quantity, then the non-consideration of the provisions under Section 37, NDPS Act, has to be taken as a very serious lapse. In cases of like nature, granting bail solely on the ground mentioned, relying on the decision in Bhawani Singh v. State of Rajasthan:(2022) SCC OnLine SC 1991 would not only go against the spirit of the said decision but also would give a wrong message to the society that being a patient of such a disease is a license to indulge in such serious offences with impunity. In the contextual situation it is to be noted that in Bhawani Singh's case the offence(s) involved was not one under the NDPS Act. We have no hesitation to say that in the above circumstances it can only be held that the twin conditions under Section 37 of the NDPS Act, are not satisfied and on the sole reason that the accused is a HIV patient, cannot be a reason to enlarge her on bail. Since the impugned order was passed without adhering to the said provision and in view of the rigour thereunder the accused-Smt.X is not entitled to

be released on bail, the impugned order invites interference.”

Finally, Learned P.P. urged for rejection of the bail application of the accused person-in-custody considering the nature and gravity of the offence.

I have seen the FIR and the other relevant prosecution papers. It is the admitted position that the IO in this case after completion of investigation has laid charge-sheet against the accused before the Learned Jurisdictional Court.

From the relevant prosecution papers, it appears that the alleged contraband item was recovered from the residence of the accused on the alleged day. May be at the time of the registration of this case, the accused absconded however, he later on surrendered on 01.04.2024 and till then he is in custody. The IO has also filed the charge-sheet within the specified period as prescribed in law.

Further, at this stage there is no materials before this Court to presume that the accused is not guilty of committing any offence and there is no likelihood of repetition of committing such offence by the accused while on bail as required under Section 37 of NDPS Act.

Furthermore, it appears that the contraband item of commercial quantity was seized from the residence of the alleged accused. So, in view of the principle of law laid down by the Hon'ble Apex Court in the aforementioned case, at this stage considering the nature and gravity of the offence, I do not find any scope to consider the bail application of the accused person-in-custody. Hence, the bail application filed stands rejected. The accused is to remain in J/C as before. However, since the IO by this time has laid charge-sheet so the Learned Special Judge, Court No.4, Agartala shall make all endeavour to proceed trial with the case giving priority. Thus, this bail application stands disposed of.

A copy of this order along the Case Diary be returned back to IO through Learned P.P. for information and necessary action.

A copy of this order also be communicated to Learned Court below.

JUDGE

