

<u>Serial No. 01</u> <u>Supplementary List</u>

HIGH COURT OF MEGHALAYA
AT SHILLONG

BA. No. 1 of 2024

		Date of Decision: 14.02.2024
Miss Nisha Chettri	Vs.	State of Meghalaya & Anr.

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioner/Appellant(s)	:	Ms. P. Chettri, Adv.
For the Respondent(s)	:	Mr. H. Kharmih, Addl. PP. with Mr. K.P. Bhattacharjee, GA.

i)	Whether approved for reporting in Law journals etc.:	Yes/No
ii)	Whether approved for publication in press:	Yes/No

JUDGMENT (ORAL)

1. Heard Ms. P. Chettri, learned counsel for the petitioner, who has submitted that the petitioner has approached this Court with this instant application for grant of bail in favour of Shri. Promod Chettri, who was arrested on 03.05.2023 in connection with Nongpoh P.S. Case No. 51(5) 2023 under Section 21(b)/29 of the NDPS Act, 1985.

2. The learned counsel has also submitted that the charge sheet have since been filed by the Investigating Officer and the matter is now

proceeding for trial before the Court of the learned Special Judge (NDPS), Nongpoh, Ri-Bhoi District.

3. In course of trial, six prosecution witnesses have been examined out of a total of nine witnesses. It is also the submission of the learned counsel that the co-accused in the case has already been granted bail by this Court vide order dated 16.11.2023. The learned counsel has fairly submitted that on previous occasion, a bail application on behalf of the said accused person has already been preferred before this Court, which was duly rejected vide order dated 08.12.2023. However, there has been a change in circumstances which was not noticed by the accused person or the petitioner for the same to be brought to the notice of this Court in the previous round of consideration of the said bail application.

4. The learned counsel has further submitted that records would show that the Standing Order No. 1/1989 issued by the Government of India on the aspect of sampling, testing and measurement of the recovered alleged contraband substances have not been complied with by the prosecution or the arresting authority and as such, the benefit of doubt would go in favour of the accused person in question.

5. In this regard, the learned counsel has led this Court to page 30

of this application, wherein is found a copy of the weight and measurement certificate as regard the manner in which the seized alleged contraband substance was handled. The learned counsel has pointed out that the date and time when the measurement was taken, was recorded as 3rd May, 2023 at 12:18 AM. As to the particulars and quantity of the seized articles, it is indicated that:

- “1) 1(one) Empty Transparent Plastic Bag Weighing about 09.26 grams.*
- 2) 1(one) Transparent Plastic Bag containing suspected heroin (The suspected heroin from the 4 few soap boxes are emptied into one transparent plastic bag marked as Ex-A). The weight of Plastic Bag & the suspected heroin is about 55.73 grams.*
- 3. The Net weight of the suspected heroin is about 46.47 grams.”*

6. Again, referring to the preliminary test report, copy of which is annexed at page 32 of this application, the learned counsel has submitted that the date and time when the test was conducted was 03/05/2023 at 12:25 AM. The process of such test is indicated as under:

“Brief of test process: A small amount of the suspected Heroin is taken out from the Ex-A (after emptying the suspected heroin from 4(four) soap Boxes into a Transparent Plastic Bag marked as Ex-A) and place it on the spot-plate provided in the kit, subsequently one drop of Reagent A-1 and 3(three) drops of Reagent A-2 are added to the suspected heroin. After 2(two) minutes of the mixture turn into purple colour which is positive for heroin (As indicated in the testing methods provided in the kit)”.

7. From the above, what could be understood is that the alleged heroin seized was initially found in four containers, however, the contents of all the four containers were deposited into one transparent plastic bag (Ex-A) from which a sample is taken for testing, which according to the preliminary test report, would show that the sample is positive for heroin.

8. The above process conducted by the arresting authority is clearly in contravention of the said Standing Order No. 1/1989. Reference is made to such Standing Order No. 1/89 at paras 2.3 and 2.4 which is quoted as under:

“2.3. The quantity to be drawn in each sample for chemical

test shall not be less than 5 grams in respect of all narcotic drugs and psychotropic substances save in the cases of opium, ganja and charas (hashish) where a quantity of 24 grams in each case is required for chemical test. The same quantities shall be taken for the duplicate sample also. The seized drugs in the packages/containers shall be well mixed to make it homogeneous and representative before the sample (in duplicate) is drawn.

2.4. In the case of seizure of a single package/container, one sample in duplicate shall be drawn. Normally, it is advisable to draw one sample (in duplicate) from each package/container in case of seizure of more than one package/container.”

9. On this point, the learned counsel has submitted that the Hon’ble High Court of Delhi in Bail Appln. No. 1133/2022 in the case of Ginkala Meddilety v. The State, dealing with the impact of the said Standing Order No. 1/1989 at paras 8, 9 and 10 of the same, had referred to relevant authorities of the Hon’ble Supreme Court including the case of Union of India v. Bal Mukund & Ors., (2009) 12 SCC 161, para 36.

Relevance to the facts of this case, according to the learned counsel for the petitioner, is found at para 9 of the said order, which is reproduced herein below:

*“9. The Coordinate Bench in **Laxman Thakur** (supra) has held that in terms of the Standing Order 1/88, transferring of content of all packets into one and then drawing of samples from the mixture is not permitted.”*

10. On being convinced with the cause of the faulty sampling process, prejudice of which has been caused to the applicant therein, the application for bail has accordingly been allowed.

11. Another contention raised by the learned counsel is that the provision of the NDPS Act has not been complied with by the arresting authority, wherein in the evidence of PW. 6 Shri. Dawanoo S.R. Lakiang, who is the Officer-in-Charge of Nongpoh Police Station and accordingly, the immediate superior officer of the complainant as well as another officer present during the search and seizure, the said PW have admitted that he was not informed in writing with regard to the arrest and seizure in compliance with Section 57 of the NDPS Act.

12. In view of the aforesaid circumstances which had come to light

only recently, and which has materially affected the circumstances as regard the accused person, the learned counsel has submitted that this Court may be pleased to allow the accused person to be enlarged on bail with any conditions to be imposed by this Court.

13. Per contra, Mr. H. Kharmih, learned Addl. PP appearing on behalf of the State respondent, in opposition to the contention and submission made by the learned counsel for the petitioner, has submitted that this Court vide order dated 08.12.2023 passed in BA. No. 61 of 2023, has rejected the prayer for bail as far as the accused person in question is concerned, and in this present bail application, similar grounds has been raised and as such, there is no material change of circumstances to enable the petitioner to approach this Court with a fresh bail application.

14. The learned Addl. PP has also submitted that records would show that there is evidence of the involvement of the accused person as was deposed by the witnesses and as such, there are no valid grounds for the petitioner to come before this Court with a prayer for grant of bail to the accused person. This application is liable to be dismissed, further submits the learned Addl. PP.

15. This Court, on consideration of the submission made by the

learned counsel for the respective parties, reference to the factual situation has been duly noted hereinabove. What is required to be considered is whether the petitioner has made out a case for grant of bail as far as the accused person Shri. Promod Chettri is concerned.

16. It is to be noted that out of nine witnesses cited by the prosecution, six of them have already been examined and as such, the case is at the fag end of its conclusion. It is too premature at this point of time to say as to whether the accused person is innocent or guilty of the offence charged against him. However, on the contention of the learned counsel for the petitioner that because of a breach as far as the process of sampling of the seized contraband substance is concerned, wherein the Standing Order referred to hereinabove, has not been complied with in its entirety, the issue is subjected to scrutiny before the Trial Court. However, prima facie, it appears that there has occurred such irregularity which has caused prejudice to the accused person.

17. The case of Ginkala Meddilety (supra), particularly the reference to para 9 duly reproduced hereinabove, the same is found acceptable by this Court.

18. Without any further discussion on the other points raised by

the learned counsel for the petitioner, more so, on consideration of the fact that the accused person has been in custody for a long time, this Court, at this point, would deem it proper to allow the prayer made.

19. Accordingly, the accused person Shri. Promod Chettri is hereby directed to be released on bail on the conditions that:

- i) He shall not abscond or tamper with the evidence and witnesses;
- ii) He shall not leave the jurisdiction of the State of Meghalaya without prior permission of the court;
- iii) He shall appear before the court concerned as and when required;
- iv) He shall bind himself on a personal bond of ₹ 30,000/- (Rupees thirty thousand) only with one surety of like amount to the satisfaction of the Trial Court.

20. As observed above, this application is accordingly disposed of.
No costs.

Judge

Meghalaya
14.02.2024
"D. Nary, PS"