

<u>Serial Nos. 02-05</u> <u>Supplementary List</u>

HIGH COURT OF MEGHALAYA
AT SHILLONG

BA. No. 2 of 2024 with
BA. No. 3 of 2024
BA. No. 4 of 2024
BA. No. 5 of 2024

Date of Decision: 16.02.2024

Smti. Lakyntiewrisha Nongrum	Vs.	State of Meghalaya & Anr.
Shri. Ferdinand Maiong	Vs.	State of Meghalaya & Anr.
Smti. Jennifer Sweety	Vs.	State of Meghalaya & Anr.
Smti. Ritalis Suphai	Vs.	State of Meghalaya & Anr.

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioner/Appellant(s)	:	Mr. R. Gurung, Adv. Mr. J. Thabah, Adv.
For the Respondent(s)	:	Mrs. T. Yangi. B, AAG. with Ms. Z.E. Nongkynrih, GA. Mr. H. Kharmih, Addl. PP. Mr. E.R. Chyne, GA.

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

COMMON ORDER (ORAL)

1. These batch of bail applications involving similar and identical facts and questions are proposed to be disposed of by this common order.

2. Heard Mr. R. Gurung, learned counsel for the petitioners, who has submitted that an FIR dated 02.05.2023 was lodged before the Officer-in-Charge, Nongpoh Police Station, Ri-Bhoi District, wherein the informant, who is a police official of the Byrnihat Outpost, Ri-Bhoi District has stated that on 01.05.2023, at about 7:30 pm, on receipt of reliable information, a Naka checking was conducted and accordingly, one vehicle (Local Taxi) bearing registration No. ML 10 C 4908 was intercepted at Umling check gate.

3. On a search and seizure being made, the alleged contraband substance was found from the dashboard of the said Local Taxi, wherein four persons who are said to be passengers of the Local Taxi are suspected to be in possession of the contraband substance which substance on being tested, would reveal that it contain heroin. The weight of the suspected drug is 9.64 grams. Accordingly, on investigation being launched, the said four passengers were arrested.

4. In due course, charge sheet was filed by the Investigating Officer, who has found that a prima facie case is well founded to proceed against the said accused persons under the relevant provisions of the Narcotic Drugs and Psychotropic Substances Act, 1985, particularly

Section 21(b)/29.

5. The case is now at the stage of evidence where one witness, out of the total nine witnesses cited, has been examined.

6. The learned counsel has submitted that the seizure of the alleged drugs was found from the dashboard of the Local Taxi, and as such, it cannot be presumed that it was found from the possession of the accused persons.

7. Reference to the applicability of Section 54 of the NDPS Act was made with the case of Sanjeet Kumar Singh alias Munna Kumar Singh v. State of Chhattisgarh being cited in this regard, the same reported in 2022 SCC OnLine SC 1117, wherein at para 34 of the same, the Hon'ble Supreme Court has observed as follows:

“34. It is true that Section 54 of the Act raises a presumption and the burden shifts on the accused to explain as to how he came into possession of the contraband. But to raise the presumption under Section 54 of the Act, it must first be established that a recovery was made from the accused. The moment a doubt is cast upon the most fundamental aspect, namely the search and seizure, the appellant, in our considered opinion will also be entitled to the same benefit as given by the Special Court to the co-accused.”

8. The next point of contention raised by the learned counsel for

the petitioners is that the alleged seized contraband drugs, though indicated as intermediate quantity, is actually not so, but in fact, it should be noted as small quantity. In support of his contention, the learned counsel has led this Court to the report of the Forensic Science Laboratory examination of the seized contraband drugs, wherein out of a sample of 5.6664 grams, when tested, it gave a positive test for the presence of diacetylmorphine, the percentage of which comes to 17.5764%. It is the contention of the learned counsel for the petitioners that 17.5764% of the 9.64 grams seized, would reveal that the actual quantity of heroin seized would be 1.69 grams.

9. Considering the fact that the accused persons in question are young persons in the age group of 20 to 30 years, some of them are 26 and some of them are 22, and also the fact that they have been in custody for about 9(nine) months or so, it is prayed that this Court may be pleased to allow these applications and to grant the prayer for enlargement of bail with any conditions as deemed fit and proper to be imposed by this Court.

10. Per Contra, Mrs. T. Yangi. B, learned AAG appearing for the State respondents, has submitted that the fact that the contraband substance i.e. heroin was seized from the Local Taxi, in which the accused

persons were travelling and also found not only from the dashboard, but also from the backseat of the said vehicle, it can simply be presumed that that the accused persons were in possession of the said contraband substances.

11. It is also submitted that in course of investigation, all the accused persons have admitted, firstly, to have been consumers of drugs and also dealing in the area of peddling of such drugs. In such circumstances, if the accused persons in question are allowed to be enlarged on bail, there is always the possibility that they will resume their activity in consumption of drugs and more dangerously, in peddling of drugs, which would pose a threat to societal interest. It is therefore prayed that these applications are devoid of merits and the same are liable to be dismissed.

12. This Court has considered the submission made and is of the view that since the matter is proceeding for trial, any reference to the factual and evidentiary process would not be proper at this stage. However, suffice it to say that upon investigation, the Investigating Officer has found enough evidence to compel the accused persons to stand trial and as such, the accused persons have to face the trial till its

conclusion. As to the contention as regard the issue of presumption as pointed out, and the authority cited in this regard, this Court feels that it is too premature at this stage to come to any conclusion on such issue.

13. The contention that the seized drug is of small quantity, the same based on the authority in the case of *E. Micheal Raj v. Intelligence Officer, Narcotic Control Bureau*, wherein it was held that in the mixture of narcotic drug or psychotropic substance with one or more neutral substance(s), the quantity of neutral substance(s) is not to be taken into consideration while determining the small or commercial quantity of the narcotic drug or psychotropic substance – It is only the actual content by weight of the offending drug which is relevant for the purpose of determining whether it would constitute small quantity or commercial quantity. This argument is however not tenable in the light of the Apex Court judgment in the case of *Hira Singh and another v. Union of India and another* reported in (2020) 20 SCC 272, wherein at para 12.1 and 12.2 of the same, the Apex Court has observed that:

“12.1. The decision of this Court in the case of E. Micheal Raj v. Narcotics Control Bureau, (2008) 5 SCC 161 taking the view that in the mixture of narcotic drugs or psychotropic substance with one or more neutral substance(s), the quantity of the neutral substance(s) is not to be taken into consideration while

determining the small quantity or commercial quantity of a narcotic drug or psychotropic substance and only the actual content by weight of the offending narcotic drug which is relevant for the purpose of determining whether it would constitute small quantity or commercial quantity, is not a good law.

12.2. *In case of seizure of mixture of Narcotic Drugs or Psychotropic Substances with one or more neutral substance(s), the quantity of neutral substance(s) is not to be excluded and to be taken into consideration along with actual content by weight of the offending drug, while determining the “small or commercial quantity” of the Narcotic Drugs or Psychotropic Substances.”*

14. Considering the fact that the accused persons have been in custody for quite some time, and also the fact that investigation has been completed, the charge sheet having been filed and evidence is ongoing, only one out of nine witnesses having been examined so far, the possibility of the trial being concluded within a short span of time from date is remote.

15. It is also to be noted that as far as bail is concerned, the only assurance that the Court would seek would be that the accused persons should not abscond and that he/she should cooperated with the trial in this regard. Reference can be made to the case of Sanjay Chandra v. CBI reported in (2012) 1 SCC 40 at para 21, wherein the Hon’ble Supreme

Court has observed that: -

“21. In bail application, generally, it has been laid down from the earliest times that the object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventative. Deprivation of liberty must be considered a punishment, unless it is required to ensure that an accused person will stand his trial when called upon. The courts owe more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty.”

16. On the overall consideration of the matter, this Court is inclined to allow the prayer made.

17. The accused persons are accordingly directed to be released on bail on the following conditions that:

- i) They shall not abscond or tamper with the evidence and witnesses;
- ii) They shall not leave the jurisdiction of the State of Meghalaya without prior permission of the court;
- iii) They shall appear before the court concerned as and when required;
- iv) They shall cooperate with the trial during pendency of the case;

- v) They shall bind themselves on a personal bond of ₹ 50,000/- (Rupees fifty thousand) each with one surety of like amount to the satisfaction of the Trial Court.

18. As observed above, these set of bail applications are accordingly disposed of. No costs.

Judge

Meghalaya
16.02.2024
"D. Nary, PS"