

Serial No. 01
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

BA No. 9 of 2024

Date of Decision: 08.04.2024

Smti. Niangkhanngai Guite
D/O Shri. Thangchinkham Guite,
R/o Sahei Road, Vengnuam,
New-Lamka,
795128, Churachanpur District,
Manipur.

Temporary address P.A.G Staff Quarter, Beharbari, Guwahati-29,
Assam.

.....Petitioner

Versus

1. State of Meghalaya represented by the Learned Public Prosecutor.

.....Respondent

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioner/Appellant(s) : Mr. T.L. Jyrwa, Adv.

For the Respondent(s) : Mr. K. Khan, P.P with
Mr. H. Kharmih, Addl. P.P
Mr. J.N. Rynjah, GA

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

ii) Whether approved for publication
in press:

Yes/No

ORDER (ORAL)

1. From the records what has emerged is that on 19.06.2023 the police after receiving a confidential source information that certain persons are involved in the transit of illegal narcotic substance, a check point was erected to intercept the suspected vehicle and accordingly in the process, one Tata Winger bearing registration No. NL-07T-0815 with the driver and another occupant was intercepted at BMS fuel station, Nongsning Village NH-6.

2. After following due procedure, a search was conducted on the person of the two occupants as well as the said vehicle wherein about 200 soap cases containing yellowish orange powder were found concealed in various hidden compartments of the vehicle. On a sample of such powder being tested on the spot the result of the test gave a positive for heroin. Accordingly, the two suspects namely Shri. Imliakum Longkumer and Shri. M. Tuanbiaklian Guite were arrested and a police case was registered as Khliehriat P.S. Case No. 48(6) 2023 under Section 21(C)/29 NDPS Act.

3. The investigation conducted in this regard, on being completed, the Investigating Officer has filed the charge sheet dated 06.09.2023 with a finding that a prima facie case under Section 21(c)/29 is found well established against the above named accused persons and also against another co-accused named Shri. Jehangir Alom who were now directed

to stand trial before the competent court of jurisdiction.

4. Mr. T.L. Jyrwa, learned counsel for the petitioner has submitted that this instant petition is preferred by the elder sister of the accused person Shri. M. Tuanbiaklian Guite with a prayer for grant of bail.

5. It is also the submission of the learned counsel that on consideration of the materials on record it is clear that the accused person Shri. M. Tuanbiaklian Guite is not at all involved in the alleged trafficking of contraband drugs and there is no prima facie evidence to prove that he is involved in any criminal activities including trafficking of drugs.

6. It is, however, submitted that the said accused person Shri. M. Tuanbiaklian Guite is known to the co-accused person Shri. Imliakum Longkumer, on that fateful day he was supposed to go to Guwahati where his family is presently residing and has therefore requested Shri. Imliakum Longkumer to allow him to travel in his car. He is however ignorant of the alleged illegal activity of Shri. Imliakum Longkumer and has no knowledge as to the concealment of any narcotic drugs in the vehicle.

7. It is also submitted that the main ground upon which the accused person in question was arrested is on the basis of call detail record (CDR) from his mobile phone to link him to the offence alleged when there is no concrete evidence in this regard, therefore no prima facie case against the accused person in question can be established and, on this ground alone he is entitled to be enlarged on bail.

8. In this regard, the learned counsel for the petitioner has cited the case of Vikrant Singh v. State of Punjab, 2022 SCC Online P&H 3584 wherein the Hon'ble High Court at para 10 and 11 of the said judgment has observed that evidence as regard call detail record has to be substantive in nature and mere call detail is not sufficient to prove involvement of the accused. Also, the case of Bharat Chaudhary v. Union of India reported in (2021) 20 SCC 50 at para 13 was also cited wherein in this case the Hon'ble Supreme Court has observed that reliance on printouts of WhatsApp messages downloaded from the mobile phone and devices of the accused cannot be treated at that stage as sufficient material to link the accused to the other co-accused.

9. The learned counsel has laid stress only on this aspect of the matter as regard the connection of the accused person in question with the other co-accused, wherein reliance on CDR may not be sufficient to infer or to come to the conclusion that the accused person is involved in the offence. The case of Haresh Rawal v. Narcotics Control Bureau, 2021 SCC Online Del 3007 at para 25 was cited in this regard wherein the High Court has observed that question regard call detail and chats will also be tested during trial.

10. The other limb of argument advanced by the learned counsel for the petitioner is that the accused person in question is suffering from Grade-IV Haemorrhoids and is required to undergo surgery, however, this ground is not pressed since records would reveal that the trial court had already directed the relevant authorities to ensure that proper treatment is given to the accused person.

11. The learned counsel has also submitted that the accused person is the sole bread earner of the family having four minor children and the fact that the charge sheet has been filed, therefore no further investigation is required, the accused person may be enlarged on bail with any conditions that this Court may deem fit to impose.

12. Per contra, Mr. K. Khan, learned P.P while opposing the submission made by the petitioner has submitted that the accused person in question is clearly involved in the commission of the offence, wherein a large quantity of narcotic drugs was seized from the vehicle occupied by the accused person and the other co-accused person and such quantity coming under the description of commercial quantity, the provision of Section 37 NDPS Act will come into play.

13. Under similar facts and circumstances, the Hon'ble Supreme Court in the case of Union of India Through Narcotics Control Bureau, Lucknow v. MD. Nawaz Khan reported in (2021) 10 SCC 100 while disposing of the appeal has observed that the High Court has overlooked certain circumstances by passing the impugned order, such circumstances being noted at para 34 to 34.4 and 35.

14. The learned P.P has also submitted that the case of Vikrant Singh (supra) relied upon by the petitioner is distinguishable as far as the facts and circumstances of this case is concerned when in the said case, the petitioners therein have not been named in the FIR and no recovery was made from them except from two co-accused who have implicated the petitioners therein on the basis of call detail which are not verifiable.

However, in this instant case, the accused person in question, apart from the call detail record has been implicated on his being found in the said vehicle containing the said narcotic drugs.

15. This Court on consideration of the submission made, is made aware of the facts and circumstances leading to the arrest of the accused person in question. Such fact being that he was apprehended while travelling in a vehicle (Tata Winger) along with the driver who is the co-accused. The fact that the police upon search and seizure of the said vehicle have recovered a large quantity of about 2.679 kg of narcotic drugs suspected to be heroin, the only person present in the vehicle being the accused person in question and the co-accused, there is no doubt that the accused persons are in conscious possession of the said contraband drugs.

16. The learned counsel for the petitioner has relied only on the aspect of the call detail record not being attributable to the guilt or involvement of the accused person in question, the fact as revealed from the records that he is very well known to the driver, that is the co-accused and also that he is aware that the contraband drugs are hidden in the vehicle, the onus to prove his innocence lies with him.

17. At this juncture, this Court would not give too much credence to the issue of the CDR being the basis of proving the innocence of the accused person in question, the same to be eventually tested in evidence. As far as the consideration for bail is concerned, other aspects of the matter has to be considered.

18. In the case of Union of India Through Narcotics Control Bureau, Lucknow (supra) the observation of the Hon'ble Supreme Court at para 34 to 34.4 and 35, as has been pointed out by the learned P.P do resemble the facts and circumstances of this case, the same being reproduced as follows:

“34. The following circumstances are crucial to assessing whether the High Court has correctly evaluated the application for bail, having regard to the provisions of Section 37:

34.1. The respondent was travelling in the vehicle all the way from Dimapur in Nagaland to Rampur in Uttar Pradesh with the co-accused.

34.2. The complaint notes that the CDR analysis of the mobile number used by the respondent indicates that the respondent was in regular touch with the other accused persons who were known to him.

34.3. The quantity of contraband found in the vehicle is of a commercial quantity.

34.4. The contraband was concealed in the vehicle in which the respondent was travelling with the co-accused.

35. The impugned order [Mohd. Nawaz Khan v. Union of India, 2020 SCC Online All 1838] of the High Court, apart from observing that no contraband was found from the personal search of the respondent has ignored the above circumstances. The High Court has merely observed that: [Mohd. Nawaz Khan v. Union of India, 2020 SCC Online All 1838 para 10]

“10. In view of the above, the twin conditions contained under Section 37(1)(b) of the NDPS Act stand satisfied. This Court is of the view that if there is reasonable ground, the applicant is entitled to be released on bail.”

19. It is reiterated that a case falling under the provision of Section 37 of the NDPS Act, negation of bail is the rule and its grant is the exception. It need not be reminded that one of the factors to be taken into account

by the court while considering the question of grant of bail is that the court must be reasonably convince that the accused is not guilty of the offences he is charged with and that if released on bail he shall not commit the same offence.

20. Even while considering the contention and submission made by the learned counsel for the petitioner, this Court is not convinced that the accused person in question is not guilty of the offence charged against him, his association with the co-accused would also lead this Court to believe that if enlarged on bail, there is no guarantee that he will not commit the same offence. These are prima facie observation which will be tested at the trial when evidences are recorded. Such observation should not influence the trial court in course of the proceedings.

21. In view of the above, this petition is found to be devoid of merit, the same is accordingly dismissed.

22. Petition disposed of. No costs.

23. Case diary to be returned.

Judge

Meghalaya
08.04.2024
"Tiprilynti-PS"