

Serial No. 01 & 02
Supplementary List

HIGH COURT OF MEGHALAYA
AT SHILLONG

BA No. 13 of 2024 with
BA No. 14 of 2024

Date of Decision: 17.05.2024

Shri Krishna Kumar Rai,
S/o Shri Upendra Rai
R/o Nongmynsong, Dongkadiang,
Lane-3, Shillong-793019,
East Khasi Hills, Meghalaya.

...Petitioner(s)

- Versus -

The Union of India
Represented by Shri Indranil
Chaliha Custom Headquarter
(Preventive) Unit, Shillong.

.. Respondent(s)

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioner(s) : Mr. S. Pandit, Adv. with
Ms. S.A. Pandit, Adv.

For the Respondent(s) : Dr. N. Mozika, DSGI with
Ms. K. Gurung, Adv.

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| i) | Whether approved for reporting in
Law journals etc: | Yes/No |
| ii) | Whether approved for publication
in press: | Yes/No |
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COMMON ORDER (ORAL)

1. These two bail applications have been filed by the same petitioner in respect of two accused persons involved in the same case i.e. Criminal NDPS Case No. 8 of 2023 pending before the Court of the learned Special Judge (NDPS), Nongpoh, Ri-Bhoi District, and as such are taken up by passing a common order.

2. The case relates to seizure of contraband substance made by Customs officials who, on receipt of reliable information had intercepted a Maruti Alto vehicle bearing Registration No. ML05 Q 6794. Following such lead, the said group of Customs officials followed the occupants of the said vehicle No. ML 05Q 6794 and at about 3:00 AM on 24.05.2023, the vehicle was asked to stop but on the said order not being complied with and was speeding away, the officers chased the vehicle and managed to intercepted it at Bhoirymbong market. On checking the vehicle, four persons were found as occupants and on being questioned they agreed to lead the officers to the exact place where they have hidden the contraband substance.

3. On reaching Liarbang Village, the said persons led the officers to a forested area where twenty-four packets of compressed blocks wrapped in brown paper suspected to be ganja were found. On due procedure being followed as far as search and seizure is concerned, the contraband substance was removed from the place it was found to the custody of the Customs officials.

4. The competent authority has then arrested the four occupants of the vehicle namely; Shri Dilu Joy Rieng, Shri Sanjib Gohai, Shri Sujit Kumar Rai and Shri Vicky Kumar and investigation was launched thereafter.

5. The Investigating Officer, on completion of his investigation has filed the final complaint before the Court of the learned Special Judge (NDPS), Nongpoh, finding that the accused persons above named are involved in the dealing, storage and transportation of the contraband substance, i.e. cannabis (ganja) weighing about 149.55 Kg. and thereby, have contravened the provisions of section 8 (c) of the NDPS Act by committing an offence punishable under section 20(b)(ii)(C) read with section 23 and 29 of the said NDPS Act. The four accused persons are now undergoing trial before the Trial Court at Nongpoh. It may be mentioned that another person has also been

named as one of the accused in this case, whose name is Sankar Saha said to be the mastermind of the whole operation, but who could not be apprehended till date.

6. Mr. S. Pandit, learned counsel for the petitioner while moving this bail application has submitted that the accused person Shri Vicky Kumar is a driver of a Local Taxi bearing registration No. ML 05 Q 6794 and on the date of the incident, he was hired by the two co-accused persons namely Dilu Joy Rieng and Sanjib Gohai to drop them to Bhoirymbong. Being night time, he requested his cousin brother Shri Sujit Kumar Rai to accompany him. It was not until the group was intercepted by the Customs officials did the accused persons Vicky Kumar and Sujit Kumar Rai realised that the situation is grave.

7. However, the learned counsel would further submit that there is no iota of evidence to prove that it was the two accused persons in question who have led the police party to the place where the alleged contraband substance was found. There is no report under section 27 of the evidence Act to indicate such fact.

8. The learned counsel has further submitted that even on perusal of the final report, it is seen that there is nothing in evidence to link the two accused persons in question to the transportation and storage

of the alleged contraband substance. What has been relied on by the prosecution is that there are call details report (CDR) to link them with the said Sankar Saha. However, from the materials on record nothing has been produced by the Investigating Officer to definitely prove this accusation, except for a bald statement made in the complaint that the accused persons in question are found to be in constant touch with the main accused.

9. This being the case, the learned counsel has submitted that even if the case of the accused persons in question is tested on the anvil of the provision laid down in section 37 of the NDPS Act, 1985, it is clear they could not have been considered to be guilty of the alleged offence.

10. The learned counsel has further submitted that the accused persons in question may be enlarged on bail, having been in custody for almost one year, with any conditions as this Court would deem fit and proper to impose, which will be duly complied with.

11. Dr. N. Mozika, learned DSGI appearing for the respondents has strongly opposed the prayer made for grant of bail on the ground that a perusal of the final complaint would show that the IO had recorded specific instances to confirm that the accused persons in question are in constant touch with the main accused i.e Shri Sankar Saha and as

such, they could not deny their involvement in the transportation and storage of the seized ganja. It is submitted that the accused persons in question may not be allowed to go on bail at this stage.

12. This Court has taken note of the argument advanced by the respective parties and has also perused the petition and the annexures thereto.

13. The fact that a large quantity of contraband substance, preliminary tested as cannabis (ganja) was seized from the forest area at Liarbang cannot be denied. There is no evidence as to who has kept the said ganja in the place it was found. But its discovery on the leading of the accused persons can only lead one to understand that there is a nexus between the accused persons and the said consignment.

14. Out of the four accused persons who are presently in custody and are facing trial, the two accused persons namely; Vicky Kumar and Sujit Kumar Rai have feigned ignorance as far as their complicity to the alleged offence is concerned. The reason being that they are only the driver and the other one has just accompanied his cousin brother, the driver, who on being offered a large sum of money to ferry the

passengers i.e. the other two accused persons, namely; Shri Dilu Joy Riang and Sanjib Gohai, they have done so as part of their vocation.

15. This Court on perusal of the final complaint and the statement of the accused persons recorded by the IO, what could be ascertained at this point of time is that the two accused persons in question are not known to the other two accused persons, i.e. Shri Dilu Joy Riang and Sanjib Gohai. The IO has also indicated in his report that there are call details record (CDR) to prove that the accused person Vicky Kumar was in touch with the alleged main accused Shri Sankar Saha where communication through mobile phone used by Vicky Kumar being No. 9233275298 and mobile No. 9233761276 used by Sankar Saha was detected from 13.05.2023 to 23.05.2023, i.e. everyday. Similarly, Sujit Kumar Rai also talked with Sankar Saha through his mobile phone No. 7005432092 from 16.05.2023 to 23.05.2023.

16. Though the learned counsel for the petitioner would maintain that there are no specific details, meaning contents of the conversation between the accused persons in question and the alleged main accused Shri Sankar Saha, the fact that the IO has been able to obtain the CDR in this regard, this Court would be convinced that there is prima facie evidence of the existence of a link or connection or acquaintance

between the accused persons in question and Shri Sankar Saha. Though it would be a matter of appreciation of evidence for the Trial Court to decide on this issue in course of trial.

17. Since the case involved seizure of commercial quantity of contraband substance (ganja), therefore, when the question of bail to accused persons involved in such case comes for consideration before the competent court of jurisdiction, the provision of section 37 of NDPS Act 1985 cannot be ignored.

18. The said provision reads as follows:-

“[37. Offences to be cognizable and non-bailable.—(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),—

(a) every offence punishable under this Act shall be cognizable;

(b) no person accused of an offence punishable for 3 [offences under section 19 or section 24 or section 27A and also for offences involving commercial quantity] shall be released on bail or on his own bond unless—

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

(2) The limitations on granting of bail specified in clause (b) of sub-section (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force on granting of bail.]”

19. What would be material here is to look at the provision of section 37 (1) (b) (ii), which provides that on the public prosecutor being heard in the matter, the court must be satisfied that there are reasonable grounds to believe that the accused person is not guilty of the offence alleged and secondly, that he is not likely to commit any offence while on bail.

20. For this Court to believe that the accused persons in question are not guilty of the offence alleged, there must be reasonable grounds for such assumption. What is 'reasonable ground' has been discussed and explained in a catena of judgment by the Supreme Court. In this regard, this Court is drawn to the explanation of the expression given by the Hon'ble Supreme Court in the case of Union of India v. Shiv Shankar Kesari (2007) 7 SCC 798. The relevant paragraphs for this limited purpose being para 7, 8, 9 & 10 are reproduced hereinbelow:-

“7. The expression used in [Section 37 \(1\)\(b\)\(ii\)](#) is "reasonable grounds". The expression means something more than prima facie grounds. It connotes substantial probable causes for believing that the accused is not guilty of the offence charged and this reasonable belief contemplated in turn points to existence of such facts and circumstances as are sufficient in themselves to justify recording of satisfaction that the accused is not guilty of the offence charged.

8. The word "reasonable" has in law the prima facie meaning of reasonable in regard to those circumstances of which the actor, called on to act reasonably, knows or ought to know. It is difficult to give an exact definition of the word 'reasonable'.

“7. ... In Stroud's Judicial Dictionary, 4th Edn., page 2258 states that it would be unreasonable to expect an exact definition of the word ‘reasonable’. Reason varies in its conclusions according to the idiosyncrasy of the individual, and the times and circumstances in which he thinks. The reasoning which built up the old scholastic logic sounds now like the jingling of a child's toy.

(See: Municipal Corpn. of Delhi v. Jagan Nath Ashok Kumar (SCC p. 504, para 7) and [Gujarat Water Supply and Sewerage Board v. Unique Erectors \(Gujarat\) \(P\) Ltd.](#)

9. “9. ...It is often said ‘an attempt to give a specific meaning to the word 'reasonable' is trying to count what is not number and measure what is not space’. The author of Words and Phrases (Permanent Edn.) has quoted from Nice & Schreiber, In re to give a plausible meaning for the said word. He says

‘the expression “reasonable” is a relative term, and the facts of the particular controversy must be considered before the question as to what constitutes reasonable can be determined’.

It is not meant to be expedient or convenient but certainly something more than that.”

10. The word 'reasonable' signifies 'in accordance with reason". In the ultimate analysis it is a question of fact, whether a particular act is reasonable or not depends on the circumstances in a given situation. (See [Municipal Corpn. of Greater Mumbai v. Kamla Mills Ltd](#))”

21. In the considered view of this Court, there are no reasonable grounds to believe that the accused persons in question are not guilty

of the offence alleged, unless they can disprove their connection or association with the said main accused person.

22. Under the facts and circumstances of this case, this Court finds that no case has been made out for grant of bail to the accused persons in question at this stage. Petitions are accordingly dismissed.

23. Petitions disposed of. No costs.

JUDGE

Meghalaya
17.05.2024
"V. Lyndem-PS"