



Serial No. 01
Supplementary 1
List

HIGH COURT OF MEGHALAYA
AT SHILLONG

BA. No. 49 of 2024

Date of Decision: 19.09.2024

Smti. Lily Mawii,
 Niece of Shri. Khailien
 Haokip
 Aged about 42 years
 R/o Madanrting,
 Lumjingsuk Block – A,
 Shillong, East Khasi Hills
 District, Meghalaya-793021

::: Petitioner

-Vs-

1. State of Meghalaya
 Represented by Ministry of
 Home Government of
 Meghalaya, Shillong.
2. Superintendent of Police
 East Jaintia Hills,
 Meghalaya.
3. Officer-In-Charge,
 Khliehriat Police Station,
 East Jaintia Hills,
 Meghalaya.

::: Respondents

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioner/Appellant(s) : Mr. R. Sharon, Adv.



For the Respondent(s) : Mr. K. Khan, PP. with
Mr. S. Sengupta, Addl. PP.
Ms. A. Thungwa, GA.

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

ORDER (ORAL)

1. Heard Mr. R. Sharon, learned counsel for the petitioner, who has submitted that on the basis of an FIR dated 16.07.2023 lodged by Shri, B. Bhattacharjee, MPS, Deputy Superintendent of Police (Crime), East Jaintia Hills District, wherein the Officer-in-Charge, Khliehriat Police Station, East Jaintia Hills District was informed of the apprehension of two ladies who were travelling in a Tata Sumo Tourist Vehicle No. MZ 04 A 2996, while proceeding from Silchar towards Khliehriat, the said vehicle being intercepted at Nongsning Petrol Pump, East Jaintia Hills District, since the occupants of the vehicle were suspected to be carrying illegal contraband on search being made, illegal contraband, weighing about 91.81 grams and 105.54 grams, positively tested to be heroin was recovered from the person of two of the said occupants of the said vehicle.



2. Accordingly, the FIR was registered as Khliehriat P.S Case No. 53(07) 23 u/s 21(b)/27/29 NDPS Act and investigation was launched. In course of investigation, the Investigating Officer (I/O) had arrested the two ladies present in the said Tata Sumo and on the basis of their information, three more persons were arrested, including the uncle of the petitioner Shri. Khailien Haokip, who was arrested on 03.08.2023 from his rented house at Umpling, Shillong.

3. According to the learned counsel, no case can be made out against the accused Uncle of the petitioner since he was not apprehended at the place of occurrence, therefore, no seizure of any alleged contraband substance was made from his person. The statement of the accused person in question either under Section 161 or 164 Cr.P.C. or even under Section 67 of the NDPS Act, have also not been recorded. In fact, his name figured only in the list of the accused persons against whom the I/O has concluded that prima facie, a well-established case under Section 21(b)/29 NDPS Act is found established, in the absence of any concrete evidence against him.

4. The I/O on completion of his investigation, has filed the charge sheet, finding that prima facie, a well-established case has been



made out against the five accused persons named therein, and they are directed to face trial for the offence under Section 21(b)/29 of the NDPS Act, 1985. The stage of the case at present is that two witnesses have been examined as prosecution witnesses. Even from the evidence of the said two witnesses, the involvement of the accused Uncle of the petitioner has not been mentioned, submits the learned counsel.

5. It is also the submission of the learned counsel that no case is made out against the accused person in question, except for the fact that his wife is well known to the accused Lhing Hoakip since they are from the same village and they used to communicate very often, especially in view of the prevailing situation in the State of Manipur.

6. The learned counsel has made an impassionate plea on behalf of the accused person in question to say that he has four minor children who are left without shelter as their house was destroyed by thunderstorm and incessant rainfall and as such, if allowed to go on bail, he will comply with any conditions as deemed fit to be imposed by this Court.

7. Mr. K. Khan, learned P.P appearing on behalf of the State respondents has submitted that on perusal of the case dairy (C.D), copy of which is produced before this Court, what can be seen is that the



complicity of the accused Uncle of the petitioner is proved, inasmuch as, from the statement of the co-accused, what has emerged is that the accused Uncle of the petitioner along with his wife have been named as the main financial supplier to facilitate the supply of the said contraband.

8. This Court on going through the materials on record, that is, the application in hand as well as the C.D, and on consideration of the submission of the learned counsels on both sides, is to come to a finding as to whether a case has been made out for grant of bail to the accused Uncle of the petitioner.

9. Since the charge sheet has been filed, charges were also framed and the case is at the stage of recording of evidence of the prosecution's witnesses, therefore, it can be said that no further investigation is required. On merits, the learned counsel for the petitioner has contended that the accused Uncle of the petitioner has been unnecessarily implicated in the case only for the reason that he and his wife are acquaintances with two of the co-accused in the case, however, no contraband substance was ever seized from his person, no call details report has been produced, and that his statement under Section 161 or 164 of the Cr.P.C. or one under Section 67 of the NDPS Act was ever



recorded and as such, the accused Uncle of the petitioner ought to be enlarged on bail.

10. This Court on perusal of the C.D, have noticed that from the statement of the accused person Smti. Ngai Rami Simte, the story that comes out is that this accused person is a drug peddler at Shillong, who used to receive the substance from one Lalboi, a resident of Manipur. Lalboi in turn has informed her that he is sending a consignment of 20(twenty) boxes of the illegal contraband substance through Smti. Lhing Haokip and Smti. Hohoi Lhanghal (two of the other co-accused). This accused person has further stated that this transaction was done with the financial support of the accused Uncle of the petitioner and his wife.

11. Again, the contention of the learned counsel of the petitioner is not correct when it was submitted that no statement of the accused Uncle of the petitioner was ever recorded by the Investigating Office (I/O). From the C.D, it is seen that the I/O has indeed recorded the statement of the accused Uncle of the petitioner on 18.07.2024 at 11:05 pm, on the same day he was arrested. In his statement, he has clearly indicated that he knows Lalboi from whom he procured the contraband which was then sent to the co-accused Smti. Ngai Rami Simte after



paying her ₹ 3,00,000/- (Rupees three lakhs). This can only strengthen the case of the prosecution to complete the chain of circumstances.

12. Though filing of the charge sheet cannot be a bar for grant of bail, it must not be forgotten that even though the cardinal principle of bail jurisprudence is “*bail and not jail*”, facts and circumstances of a particular case has to be taken into account to consider the nature and gravity of the offence involved, the evidence against the person concerned, the likelihood of his or her absconding, if enlarged on bail and other related factors.

13. It is on record that the accused Uncle of the petitioner is not only involved in this single case, but has also been implicated in another case, also under the various sections of the NDPS Act. The fact that he is a resident of the State of Manipur, though not a bar, but in the light of his alleged involvement in the case, there is a likelihood of him being a flight risk. The most important aspect of the matter that has weigh heavily upon this Court is the gravity and nature of the crime in question, that is, the impact of the effect of drug addiction as a result of such contraband substance being easily available in this State. The alarming situation could not but be termed as one of a very serious nature for which in cases



of this kind, the court has to balance the consideration of private rights and liberty vis-à-vis societal protection and interest.

14. Though this Court would not come to any conclusion as to the complicity of the accused person in question as far as the case pending before the Trial Court is concerned, however, it is thought prudent to allow the whole body of evidence to be produced for which the Trial Court is competent to do so and to finally come to the findings and conclusion as to the guilt or innocence of the said accused person in question.

15. Under such circumstances, this Court finds that this application is devoid of merits and the same is hereby dismissed.

16. Matter disposed of. No costs.

Judge