



Serial No. 01
Supplementary List

HIGH COURT OF MEGHALAYA
AT SHILLONG

BA. No. 50 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.

::::: 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 this is a case of complete injustice meted out to the accused Uncle of the petitioner who was arrested on 18.07.2023 in connection with Khliehriat P.S case No. 45(6) of 2023 u/s 21(c)/29 of the NDPS Act, 1985, now registered as Spl. NDPS Case No. 37 of 2023, pending trial before the Court of the learned Special Judge (NDPS) at Khliehriat, East Jaintia Hills District.

2. The learned counsel has submitted that in this case, four persons, including himself were arrested, one of them being his wife. The fact is that the accused Uncle of the petitioner was not present when the initial arrest of the main accused person was made, however, when the police came to apprehend him, his wife was also arrested and a mobile phone was seized from her possession. The accused person in question has no mobile phone and no incriminating materials or contraband was seized from him, therefore, being innocent, he was unnecessarily arrested



in connection with the said Khliehriat P.S Case.

3. The name of the accused person in question was not found in the FIR and the Panchnama was also prepared without any revelation of his involvement, more importantly, his statement either under Section 161 or 164 Cr.P.C. or even under Section 67 of the NDPS Act, have also not been recorded, further submits the learned counsel.

4. 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 one of the co-accused person, Smti. Ngai Rami Simte, 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, as such, the mobile number of the said co-accused was found in the mobile phone of the accused Uncle of the petitioner.

5. The learned counsel has reiterated that the accused person in question has no connection with the alleged offence said to have been committed by the main accused who was arrested on the said contraband substance recovered from his possession. In fact, in the cross-examination of the PW-1, the police officer who has lodged the FIR and who was also present when the main accused person Shri. Shokhothang



Touthang was arrested, this witness has stated that he does not know the mobile number of the accused person Shri. Khailien Haokip (the accused person in question), nor did he know whether the I/O has recorded the statement of this accused person and his wife under Section 67 of the NDPS Act. Therefore, there is no basis or ground for the accused person to be charged under Section 29 of the NDPS Act.

6. The learned counsel has made an impassionate plea on behalf of the accused person in question to say that he has five 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, from the statement made by the main accused person who is not before this Court, and who was the carrier of the contraband substance, the link between this accused and the accused person in question has been established, inasmuch as, it was the accused person in question who has arranged for the transportation of the said contraband when he has instructed the said main accused person to hand over the bag containing the said contraband to the other co-



accused person in this case i.e. Smti. Ngai Rami Simte. Even the statement given by the said co-accused person Smti. Ngai Rami Simte, would show that she was informed by the accused person in question i.e. Shri. Khailien Haokip to expect a parcel through one person whose name is not known to her.

8. The learned PP has therefore sought to impress upon this Court that the chain of circumstances has clearly placed the accused person in question to be one of the main players in the supply and transportation of the seized contraband. Therefore, to say that the provision of Section 29 NDPS Act will not be applicable in this case is far from the truth. This application being devoid of merit, is liable to be dismissed, submits the learned PP.

9. This Court has assessed and carefully considered the submission made by the learned counsels for the parties and have also perused the C.D. On going through the contents of the same, what can be said is that the contention of the learned counsel for the petitioner that the accused person in question Shri. Khailien Haokip is not at all involved in the whole incident concerning the said apprehension and seizure of the contraband substance from the possession of the main accused Shri. Shokhothang Touthang is not correct, even, if the assertion that he was



implicated only on the basis of the phone number of the said accused person as well as the other co-accused person Smti. Ngai Rami Simte being found in the mobile phone of his wife, who incidentally has also been arrested in this case, thereby, indicating that he cannot be implicated in the case since he is not having any mobile phone of his own and is not even aware of the name or even the existence of the said main accused person, which assertion is contrary to what has been recorded in the C.D.

10. This Court has gone through the statement made by the main accused Shri. Shokhothang Touthang, who has narrated that it was the accused person in question who had arranged for him to go to Shillong on the pretext that there is construction work at Shillong and he had also given him (the main accused) one black airbag, from which airbag this contraband substance was seized by the police at the place of occurrence. In fact, the accused person in question, in his statement before the police recorded on 11.09.2023 had also confirmed that he had arranged for the main accused to proceed to Shillong and had persuaded him to take the consignment to Shillong through Aizawl and had directed him to hand over the said consignment to Smti. Ngai Rami Simte, of course, on the promise that he would be paid a good sum of money for such service. The accused person in question has also stated that he had lost his mobile



phone and could not contact Smti. Ngai Rami Simte as he could not remember her contact number. This would only prove that he was in possession of a mobile phone.

11. In view of such testamentary evidence, though the same is required to be tested in course of trial, suffice it to say that prima facie, the presumption that the accused person in question is involved in the whole operation cannot be ruled out at this point of time.

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 also to be noted that the offence herein involves Section 21(c) of the NDPS Act which speaks of a seizure of commercial quantity of contraband substance, therefore, the rigors of Section 37 of the NDPS Act is attracted as far as the case involving the accused person in question is involved even though he is charged under Section 29 of the



said Act.

14. 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.

15. Under the circumstances cited above, at this juncture, this Court is of the view that the petitioner has not been able to make out a case for grant of bail as far as the accused in question is concerned.

16. Accordingly, this Court finds that this application is devoid of merits and the same is hereby dismissed.

17. Matter disposed of. No costs.



Judge