



Serial No. 02
Supplementary List

HIGH COURT OF MEGHALAYA
AT SHILLONG

BA No. 69 of 2024

Date of Decision: 27.09.2024

Shri. M. Thangchinkham Guite,
 S/o Shri. M. Ginkhotuan Guite,
 R/o Sahei Road, Vengnuam,
 New-Lamka, 795128, Churachanpur District, Manipur
 Temporary address P.A.G Staff Quarter, Beharbari, Guwahati-29,
 And Assam.

.....Petitioner

-Versus-

1. State of Meghalaya represent 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
 Mr. S. Sengupta, Addl. P.P
 Mr. H. Kharmih, Addl. P.P

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

ii) Whether approved for publication in press: Yes/No

**ORDER (ORAL)**

1. This is an application preferred under Section 483 of the BNSS read with Section 37 of the NDPS, 1985, for grant of bail on behalf of the accused person Shri. M. Tuanbiaklian who was arrested in connection with Khliehriat P.S. Case No. 48(6) 2023 under Section 21(C)/29 NDPS Act, now registered as Special (NDPS) Case No. 27 of 2023 pending trial before the court of the learned Special Judge (NDPS) at Khliehriat, East Jaintia Hills District.
2. The background facts of the case 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.
3. On a search being conducted, from the said vehicle about 200 soap cases containing yellowish orange powder were found concealed in various hidden compartments. Sample of such powder was 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, who are occupants of the vehicle were arrested and a police case was registered as Khliehriat P.S. Case No. 48(6) 2023 under Section 21(C)/29 NDPS Act.
4. 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 NDPS is found well established against the above named accused persons and also against another co-accused named Shri. Jahangir Alom. The accused persons are directed to stand trial before the court of the learned Special Judge (NDPS) at Khliehriat.

5. Mr. T.L. Jyrwa, learned counsel for the petitioner has submitted that this instant petition is preferred by the father of the accused person Shri. M. Tuanbiaklian Guite.

6. It is the submission of the learned counsel that the accused person in question is innocent and has no involvement at all in regard to the alleged offence. He just happened to be a passenger of the said vehicle which is a commercial vehicle, on his way to Guwahati where his minor children are presently residing. Therefore, having no knowledge of the presence of the seized contraband, he cannot be accused of even having conscious possession of the same.

7. In this regard, the learned counsel has referred to Section 35 of the NDPS Act to say that the provision envisaged a situation that in a case of prosecution under the NDPS Act, the culpable mental state of the accused, which imply intention, motive or knowledge of a fact has to be believed by the court beyond reasonable doubt, the onus of which lies with the accused, which in this case has been ably discharged by the accused since no connection can be established to implicate him with the seizure made. In fact, even if a perusal of the evidence of the prosecution witnesses is made, there is nothing to show or prove that



the accused person is at all involved in the case.

8. To buttress this point, the learned counsel has cited the case of *Kishore Bira v. State of Odisha* wherein at para 10 of the order dated 11.07.2022 passed in BLAPL No. 9629 of 2021 the Hon'ble High Court of Orissa has cited the case of *Sorabkhan Ghandhkhan Pathan & Anr. v. State of Gujarat* [(2004) 13 SCC 608], wherein the Hon'ble Supreme Court in essence, has observed that without any proof that the accused has any knowledge or is conniving with the co-accused in carrying the contraband, absence of any such material cannot be a ground to convict the said accused only on the ground that he was found in the autorickshaw.

9. Another case cited by the learned counsel dealing with the import of Section 35 of the NDPS Act is a case of *Bhola Singh v. State of Punjab*, (2011) 11 SCC 653, para 10 and 11 wherein the Hon'ble Supreme Court has laid stress on the role of the prosecution to prove that the accused had knowledge (of the offence) which can only be found out after the evidence is proved beyond reasonable doubt, whereupon the presumption under Section 35 will arise.

10. Per contra, Mr. K. Khan, learned P.P while opposing the contention raised by the learned counsel for the petitioner has submitted that in a context of the provision of Section 35, the concept of knowledge (of the accused) has to be read in conjunction with the words 'possession' and 'conscious'. The case of *Union of India v. Md. Nawaz Khan*, (2021) 10 SCC 100, para 25 and 26 was cited by the learned P.P wherein the Hon'ble Supreme Court at para 25 has referred



to the case of *Madan Lal v. State of H.P* [(2003) 7 SCC 465] where is found the interpretation of the expression “possession” at para 22 to say that the expression “possession” is a polymorphous term which assumes different colours in different context and carry different meanings in contextually different backgrounds and also the word ‘conscious’ at para 23 where it is said that the word “conscious” means awareness about a particular fact. It is a state of mind which is deliberate or intended. At para 26 the court has observed that conscious possession is the knowledge of possession of contraband, such knowledge to be gleaned from the facts and circumstances of a case.

11. The learned P.P has further submitted that to attract the provision of Section 35 there has to be evidence that the accused is aware of the fact that the contraband was hidden in the said vehicle. This fact can be revealed by the accused himself or can be found out through other sources. In this case, the statement of the accused made under Section 161 Cr.P.C, though not applicable in course of trial however, for the limited purpose of consideration of bail the same can be acknowledged, when he has stated that he was in touch with the co-accused (Shri. Imliakum Longkumer) since 01.06.2023 and that he knows that Shri. Imliakum is a drug peddler. He has further stated that he has agreed to travel to Guwahati to help him drive the vehicle. More importantly, he has also stated that he was aware that illegal consignment (drug) was concealed inside the vehicle. This has reinforced the presumption that the accused is aware of the existence of the said contraband and hence Section 35 can safely be made applicable to the case of the accused.



12. The learned P.P has also made an impassionate plea that cases of this kind would call upon the court to strike a balance between personal liberty and societal interest, when as recent as yesterday, an alleged “Queen bee” of drug peddling was arrested in the city which speaks of the menace of drug trafficking infiltrating the core of our society, such menace is required to be dealt with very stringently by the law enforcement authorities. It is therefore, submitted that this is not a fit case for grant of bail to the accused person.

13. In reply, the learned counsel for the petitioner has submitted as far as the accused person is concerned, it is reiterated that there are no evidence or material found to prove that he is connected to the concealment or discovery and seizure of the said alleged contraband substance from the vehicle he was travelling in since the same being a public vehicle, he was just a mere passenger and has no knowledge or fact of the same.

14. As to the reliance of the prosecution on the statement made by the accused under Section 161 Cr.P.C which amounts to a statement made under Section 67 NDPS Act, the learned counsel has submitted that the same could not be taken as an admission of guilt being inadmissible in evidence as was held in the case of Tofan Singh v. State of Tamil Nadu, (2021) 4 SCC 1.

15. It is prayed that this petition may be allowed and the accused be released on bail with any conditions as deemed fit and proper to be imposed by this Court.



16. This Court is conscious of the fact that a number of applications have been filed on behalf of the accused person seeking grant of bail in connection with the aforementioned case, four of them before the trial court, this being the second application before this Court.

17. It need not be reminded that a person who is charged with an offence under the NDPS Act is placed in a very difficult position as far as prayer for grant of bail is concerned in view of the presence of Section 37 of the Act, which in effect provides that bail can only be granted only if the court is satisfied that there are reasonable grounds for believing that he is not guilty of the offence and he is not likely to commit the offence while on bail.

18. Since the contraband substance seized amounts to about 2.738 kgs of heroin, naturally, the rigours of Section 37 has to be taken into account while considering the prayer made for grant of bail.

19. In a catena of judgments, the Hon'ble Supreme Court has construed the term "reasonable grounds" in the context of Section 37 NDPS Act to mean that such grounds must be the basis for the court to believe that the accused is not guilty of the offence alleged. Again, reasonable grounds have to be gathered taking into account the nature and gravity of the offence involved, the evidence and circumstances found against the accused person. It implies something more than prima facie grounds.

20. Though the accused person in question has maintained that he is innocent and is not aware of the said contraband discovered in the



vehicle he was travelling in, the fact that such seizure has been linked to one of the accused person Shri. Imliakum Longkumer and that this person is also known to the accused person in question, the allegation of the call made between them not being denied by him, it is probably not a coincidence that the accused person in question happens to be travelling by the same vehicle containing the said contraband consignment.

21. As to the reliance of the learned counsel for the petitioner on the applicability of Section 35 of the Act to the case of the accused person, in the opinion of this Court the same has to be established only when the whole body of evidence is considered and appreciated by the trial court. At this stage, the assertion made thus is too premature to convince this Court that the accused person is not aware of the concealment of such contraband in the vehicle he was travelling in.

22. Under such circumstances, this Court is not inclined to agree to the contention raised by the learned counsel for the petitioner. Accordingly, this petition is found to be devoid of merits, the same is hereby dismissed.

23. Petition disposed of. No costs.

Judge