



Serial No. 14
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

BA. No. 70 of 2024 with
CrI.M.C. No. 101 of 2024

Date of Decision 04.11.2024

1. Sri. Jenel D. Sangma,
S/o Sri. Krosdingwel Marngar,
R/o Vill Nongkriah,
P.O. Dangar P.S. Mawsynram.
2. Sri. Somison Sangma,
S/o Sri. Sten Sangma,
R/o Vill Nongkriah,
P.O. Dangar P.S. Mawsynram.
3. Sri. Gopal Barman,
S/o Sri. Dines Barman,
R/o Vill Nongkriah,
P.O. Dangar P.S. Mawsynram.

..... Accused/Petitioners

-Vs-

State of Meghalaya represented
By Public Prosecutor.

..... Respondents

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioner/Appellant(s) : Mr. P.K. Borah, Adv.

For the Respondent(s) : Mrs. T. Yangi. B, AAG. with



Mr. E.R. Chyne, GA.

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

JUDGMENT (ORAL)

1. It is the case of the petitioners that on 19.01.2024, while they were proceeding towards Ranikor by two Motor Bikes, they were intercepted at the Ranikor Bridge by some BSF personnel. After quite some time, the police along with two Magistrates came to the place of incident, and on search and seizure being made, some alleged contraband narcotic substance (Yaba tablets) were seized from the possession of one of the petitioners namely, Sri. Jenel D. Sangma.

2. Accordingly, an FIR was lodged by Shri. Irfan Bashir Magrey, Assistant Commandant, 193 Bn, BSF and the three accused persons/petitioners were arrested and detained in custody in connection with a CrI.Case registered as Ranikor P.S. Case No. 3 (01) 2024 under Section 22(c)/29 NDPS Act.



3. After investigation is completed, the charge sheet was filed by the Investigating Officer (I/O) with an observation that a prima facie case is found well-established against the accused persons/petitioners under Section 22(c)/29 NDPS Act and a regular case being CrI.NDPS Case No. 3/2024 is pending before the Court of the learned Special Judge (NDPS), South West Khasi Hills District, Mawkyrwat. Till date, three witnesses have been examined as prosecution witnesses.

4. Mr. P.K. Borah, learned counsel appearing on behalf of the accused persons/petitioners has submitted that this application under Section 437/439 Cr.P.C read with Section 37 of the NDPS Act has been filed with a prayer for grant of bail, firstly, on the ground that in course of their arrest, the manner in which the seizure was made from the petitioners is found to be illegal and irregular, inasmuch as, the procedure as prescribed under Section 42(2) of the NDPS Act has not been complied with since the search and seizure was not made by an empowered officer.

5. Secondly, the learned counsel has submitted that the petitioners are young men and they are also local residents of the area with no criminal antecedent and also being vouched for by the headman



of the village as far as their character is concerned, and, if enlarged on bail, they will fully cooperate with the trial and will not abscond or get involved in any manner so as to intimidate witnesses or to tamper with the evidence.

6. As regard the provision of Section 42, the learned counsel has cited the case of ***State of Punjab v. Balbir Singh reported in (1994) 3 SCC 299***, para 25 (2-C) and (4-A).

7. Per contra, Mrs. T. Yangi. B, learned AAG assisted by Mr. E.R. Chyne, learned GA appearing on behalf of the State respondent has vehemently opposed the prayer made by the learned counsel for the petitioners, and has submitted that this is a case involving seizure of narcotic drugs, and as such, being of commercial quantity, the rigors of Section 37 of the NDPS Act would apply even at this stage when a prayer for grant of bail is made. As to what the provision of Section 37 entails, the learned AAG has cited the case of ***Union of India v. Ajay Kumar Singh alias Pappu reported in 2023 SCC OnLine SC 346***, wherein at para 14, 16 and 17, the Hon'ble Supreme Court has restated the principles for consideration of bail where Section 37 of the NDPS Act is involved, and has contended that the petitioners having failed to



satisfy this Court that they are innocent of the offence alleged against them and also that no commitment can be given that they will not repeat the offence, if enlarged on bail. Therefore, this Court may not enlarged the petitioners on bail at this stage, further submits the learned AAG.

8. The learned AAG has also refuted the contention of the learned counsel for the petitioners as far as the issue of non-compliance of Section 42(2) is concerned, and has submitted that the issue will be the subject matter of the trial, inasmuch as, it would be incumbent upon the Trial Court to appreciate the evidence in this regard to come to a finding as to whether the provision of Section 42(2) of the NDPS Act has been complied with or not.

9. As far as the consideration of bail on this ground is concerned, the learned AAG has submitted that the Hon'ble High Court of Punjab and Haryana in the case of Mandeep Kaur v. State of Punjab in an order dated 25.07.2022 passed in CRM-M-27760-2021 at para 23 had cited the case of Union of India through Narcotics Control Bureau, Lucknow v. Md. Nawaz Khan reported in (2021) 10 SCC 100 , wherein the Apex Court has categorically held that at the time of grant of bail, the question as regards compliance or non-compliance of Section 42 of the



Act is not strictly required to be gone into as the same is a matter, which would be best left to be adjudicated at the time of trial.

10. In the facts and circumstances of this instant case, the learned AAG has submitted that the petitioners does not have a case for grant of bail and this petition may be dismissed as devoid of merits.

11. This Court has given considerable thought to the arguments of the learned counsels for the respective parties and has perused the petition as well as the authorities cited.

12. The fact that the petitioners has been arrested in connection with a case under the NDPS Act for allegedly being in possession of contraband substance which is of commercial quantity, therefore, the charge against them punishable under Section 22(c) of the NDPS Act will have to be proved in course of trial. There is however prima facie evidence that the trio are involved in such offence alleged against them. This being the case, for consideration of a prayer made for grant of bail, the provision of Section 37 of the Act has to be taken into account.



13. As has been pointed out by the learned AAG in the case of Ajay Kumar Singh (supra), the Hon'ble Supreme Court at para 16 of the same has observed as follows:

“16. In view of the above provisions, it is implicit that no person accused of an offence involving trade in commercial quantity of narcotics is liable to be released on bail unless the court is satisfied that there are reasonable grounds for believing that the is not guilty of such an offence and that he is not likely to commit any offence while on bail.”

14. This Court is in agreement with such contention and the authorities cited, and based on the materials on record including the evidence of PW. 1 and PW. 2, who have categorically identified the accused persons/petitioners as the perpetrators of the crime, copies of which have been produced before this Court by the learned counsel for the petitioners, there is no doubt that this Court would believe that the accused persons/petitioners are not guilty of the offence alleged and also that they may not repeat the offence, if enlarged on bail.

15. As to the question raised as far as the applicability or rather non-applicability of Section 42(2) of the Act to the case of the petitioners at the time when they were arrested, this Court is also inclined to the contention of the learned AAG in this regard and is in



respectful agreement with the observations made by the Hon'ble High Court of Punjab and Haryana in the case of Mandeep Kaur (supra) at para 23. It is also the opinion of this Court that this issue can only be looked into and decided by the Trial Court in due course, the same cannot be the ground for consideration of bail or otherwise.

16. In view of the observations made herein above, this petition is found to be devoid of merits and the same is accordingly dismissed.

17. Matter disposed of. No costs.

Judge