

GAHC040006592024



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)
(ITANAGAR BENCH)

Case No. : Crl.Petn./73/2024

Prem Khandu Phaichurpa
Son of Shri Tsewang Tenzing, permanent resident of Lachang/ Khaso Village, PO and
PS Dirang, West Kameng District, Arunachal Pradesh

VERSUS

The State of AP and Anr
represented by the PP of AP 2:Inspector Jumli Kamdak
Age: 0
Occupation

Advocate for the Petitioner : Adam Tatak
Tsering Gyato

Advocate for the Respondent : J. Tsering, P P of AP

BEFORE
HONBLE MRS. JUSTICE MARLI VANKUNG

ORDER

Date : 23-07-2024

Heard Mr. T. Gyatso, learned counsel for the petitioner and Mr. J. Tsering, learned Public Prosecutor for the State respondent.

2. This is a petition filed under Section 482 of the Code of Criminal Procedure, 1973 for granting immunity from the prosecution to the alleged accused person under Section 64A of ND&PS Act, by quashing and setting aside

the prosecution proceeding of the Charge-Sheet No. 38/2023 dated 25.08.2023 pursuant to the ND&PS Case No. 43/2023 in Niti Vihar PS Case No. 30/2023 registered under Section 20(b)(ii)A/27/29 ND&PS Act, which is pending trial before the Court of Special Judge (ND&PS Act), Yupia, District Papum Pare.

3. Facts leading to the instant petition in brief is that, an FIR dated 22.06.2023 was received and filed to the effect that on the basis of the verbal information received from the OC PS Itanagar, a raid was conducted in a building where 3 (three) boys including the instant petitioner were found consuming cannabis in the room. On receipt of the information, all the 3 (three) persons were apprehended and on search of the room, 355 grams of suspected cannabis and 2 nos. of plastic bottles of 250 ml used for consuming drugs were recovered from the room. On spot interrogation, it was disclosed that the 3 (three) accused persons including the present petitioner were drug addicts. Accordingly, criminal case was registered against the petitioner along with the other 2 (two) accused persons, in Case No. 30/2023 dated 22.06.2023 under Section 20(b)(ii)A/27/29 ND&PS Act. After due investigation, Charge-Sheet No. 38/2023 dated 25.08.2023 under Section 20(b)(ii)A/27/29 ND&PS Act was filed and the case was committed before the learned Special Judge (ND&PS Act). During consideration of the charge, the learned Special Judge (ND&PS Act) dropped the charges made against the petitioner under Section 29 of the ND&PS Act. Subsequently, on 28.06.2023, after considering that the petitioner is an addict, bail was granted to the petitioner and he was admitted to a Rehabilitation Centre. The petitioner was admitted to Happy Life Vision Foundation, Namsai on 07.07.2023 and was discharged on 18.08.2023. The petitioner had undergone rehabilitation treatment for 45 days and the discharge slip from the Happy Life Vision Foundation, certified that the petitioner was free

from addiction and living a happy life with positive approach towards future.

4. The learned counsel for the petitioner submits that since the petitioner has undergone proper treatment and had successfully completed the treatment, the petitioner is entitled to be granted immunity under Section 64A of the ND&PS Act by quashing the proceeding of the Charge-Sheet No. 38/2023 dated 25.08.2023 pursuant to ND&PS Case No. 43/2023 in Niti Vihar PS

Case No. 30/2023 registered under Section 20(b)(ii)A/27/29 ND&PS Act, which is pending trial before the Court of Special Judge (ND&PS Act), Yupia. The learned counsel for the petitioner submits that perusing of the records clearly state that the petitioner was not involved in drug trafficking. The petitioner was identified as a consumer of the substance and was caught in possession of the contraband substance of small quantity. Since the petitioner has undergone the treatment, he may be granted immunity under Section 64A of the ND&PS Act. In support of his submissions, the learned counsel has relied on the judgment of the High Court of Karnataka dated 24.01.2022 in the case of **Mr. Vaibhav Gupta Vs. Union of India** in Writ Petition No. 11193/2021 (GM-RES).

5. Mr. J. Tsering, learned Public Prosecutor for the State respondent has not raised any objection and in all fairness admits that the documents submitted by the petitioner clearly shows that the petitioner has undergone the required treatment for his rehabilitation and cure from his drug addiction, wherein he was admitted at Happy Life Vision Foundation for a period of 45 days and therefore, Section 64A of the ND&PS Act is found to be applicable in the instant case.

6. I have heard the submissions made by the learned counsels for both the parties and have also perused the documents on record.

7. It is seen that the petitioner is charged under Section 20(b)(ii)A/27/29 ND&PS Act for the seizure of a small quantity of cannabis and the petitioner is not a drug trafficker or peddler but a drug addict. The documents submitted clearly shows that the petitioner has undergone the required treatment for the addiction for a period of 45 days, wherein in hid discharge certificate from Happy Life Vision Foundation it has been certified that the petitioner is cured of his addiction and had a positive attitude to life. Section 64A of the ND&PS Act provides as follows:-

“64A. Immunity from prosecution to addicts volunteering for treatment.—

Any addict, who is charged with an offence punishable under section 27 or with offences involving small quantity of narcotic drugs or psychotropic substances, who voluntarily seeks to undergo medical treatment for de-addiction from a hospital or an institution maintained or recognised by the Government or a local authority and undergoes such treatment shall not be liable to prosecution under section 27 or under any other section for offences involving small quantity of narcotic drugs or psychotropic substances:

Provided that the said immunity from prosecution may be withdrawn if the addict does not undergo the complete treatment for de-addiction.”

8. The High Court of Karnataka dated 24.01.2022 in the case of **Mr. Vaibhav Gupta (Supra)** had also allowed the invoking of section 64A ND& PS Act to the petitioner by considering the decision of the Madras High Court in **Sanjiv Bhatnagar Vs. State [Criminal Revision Case**

No.1278/2015], where it was observed that:-

“11. "Given the attendant facts and circumstances, the prosecution in the instant case may at best be able to make out an offence under Section 27 of NDPS Act. The question that arises for consideration would be whether the accused should be required to undergo trial towards his conviction for offence under Section 27 of NDPS Act and would he only thereafter be entitled to seek the benefit of Section 64(A) of NDPS Act. Simply put, Section 64(A) of NDPS Act is one intended to rid an user of drugs from the evil thereof and towards his rehabilitation, the end object being to facilitate a life free of drugs. This Court is of the view that when the material gathered by the prosecution itself informs the petitioner to be an user of drugs and not in too large a quantity the provision for rehabilitation should be given effect to at the earliest. It is to be noted that in offence under Section 27 of NDPS Act, no distinction is made between small and commercial quantity. This Court may hasten to add that a decision in each case is to be arrived at on the particular facts thereof.”

9. In view of the above, this Court considering the facts and circumstances under which the petitioner was arrested finds that the petitioner is entitled to claim immunity in accordance with Section 64A of the ND&PS Act and thus, the proceeding against the instant petitioner in Charge-Sheet No. 38/2023 dated 25.08.2023 pursuant to the ND&PS Case No. 43/2023 in Niti Vihar PS Case No. 30/2023 registered under Section 20(b)(ii)A/27/29 ND&PS Act before the Court of Special Judge (ND&PS Act), Yupia, District Papum Pare stands quashed. It may be noted that the proceedings before the learned Court of Special Judge

(ND&PS Act) is to be quashed with regards to the instant petitioner, Mr. Prem Khandu Phaichurpa.

10. Accordingly, Criminal Petition is granted and stands disposed of.

JUDGE

Comparing Assistant