



Serial No. 01
Supplementary List

HIGH COURT OF MEGHALAYA
AT SHILLONG

BA No. 1 of 2025

Date of Decision: 28.01.2025

Shri. Barak Ali
 Father of Shri. Siraj Ali,
 Resident of Bishop Cotton Road,
 Shillong East Khasi Hills, Meghalaya

.....Applicant

-VERSUS-

State of Meghalaya
 Represented by Public Prosecutor
 East Khasi Hills, Meghalaya

.....Respondent

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioner/Appellant(s) : Ms. B. Khongthaw, Adv.

For the Respondent(s) : Mr. N.D. Chullai, 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

ORDER (ORAL)

1. Heard Ms. B. Khongthaw, learned counsel for the applicant who has submitted that this instant application has been preferred under



Section 483 of the BNSS read with Section 37 of the NDPS Act with a prayer for grant of bail on behalf of Shri. Siraj Ali who is the accused person in connection with Crl. NDPS Case No. 26 of 2024 before the court of the learned Special Judge (NDPS), Khliehriat, East Jaintia Hills District.

2. It is the submission of the learned counsel that the accused person is the son of the applicant who was sent by the applicant to Silchar, Assam in connection with a truck belonging to the said applicant which was lying in a damaged condition on account of an accident which has taken place involving the said vehicle. Accordingly, the accused person has proceeded towards Silchar by public transport and on completion of his assignment, he had boarded a bus (Night Super) from Silchar to Shillong. This took place on 22.08.2024.

3. In course of the journey, the said bus was stopped by the police for routine check and in the process, the police personnel discovered a brown carton lying underneath the seat where the accused was sitting and finding it of suspicious nature, the same was checked. Inside the carton was found an inverter and on further examination it was also found that it contained consignment of suspected contraband substance being yellow-orange powder weighing about 79.81 gram. The same on being tested revealed to be heroin. The accused person was accordingly arrested on the ground that he is found to be in conscious possession of the said contraband.

4. On a FIR filed by SI Laitphar Syiem of Ratacherra C. P, East Jaintia Hills, Meghalaya, a case was registered being Lumshnong P.S. Case No. 32(8) of 2024 under Section 21(b)/29 NDPS Act. On



investigation being completed, the charge sheet was filed and the Investigating Officer (IO) had forwarded the accused person to the competent court of jurisdiction for trial. The stage of trial is for consideration of charges and the next date fixed for the case is 30.01.2025.

5. It is the further submission of the learned counsel that the accused person is a mere passenger and has no knowledge of the said consignment or box which was kept under the seat that he was sitting and as such, the prosecution has falsely implicated him in the case. In this regard, the learned counsel has referred to the case of Kishore Bira v. State of Odisha passed in BLAPL No. 9629 of 2021 where at para 9 of the same is cited the case of Avtar Singh and Ors. v. State of Punjab wherein the Hon'ble Supreme Court, inter alia, has observed that “... *The persons who were merely sitting on the bags, in the absence of proof of anything more, cannot be presumed to be in possession of the goods.*” It is a similar situation as far as the case of the accused person herein is concerned, further submits the learned counsel and therefore at this point of time, it is prayed that the accused may be enlarged on bail on any conditions that this Court deems fit to impose.

6. Per contra, Mr. N.D. Chullai, learned AAG along with Mr. E.R. Chyne, learned GA while opposing the prayer made, has submitted that the applicant has failed to reveal the complete facts and circumstances of the case of the accused inasmuch as five bail applications have been preferred before the learned trial court which was rejected on merits. Therefore, there being no change of circumstances at this point of time, the accused may not be enlarged on bail.



7. It is also the submission of the learned AAG that the case involves contraband narcotic substance, that is, heroin which is very serious in nature inasmuch as the drug related situation in this State is very serious and needs to be combatted by all concerned, that is, the enforcement forces and even the common citizen as well as courts of justice. In this regard, the learned AAG has referred to the case of *Shri. Khupliansum v. State of Meghalaya* wherein vide order dated 31.07.2023 passed in BA No. 22 of 2023, this Court at para 18, 19 and 20 has observed as follows:-

“18. In the case of *Indresh Kumar (supra)*, the Hon’ble Supreme Court has cited the case of *Dataram Singh v. State of U.P & Ors: (2018) 3 SCC 22*, more particularly para 2 of the same which reads as follows:

“2. There is no doubt that the grant or denial of bail is entirely the discretion of the judge considering a case but even so, the exercise of judicial discretion has been circumscribed by a large number of decisions rendered by this Court and by every High Court in the country. Yet, occasionally there is a necessity to introspect whether denying bail to an accused person is the right thing to do on the facts and in the circumstances of a case.”

19. Taking a cue from this, this Court is reminded of a remark which runs as follows:

“The scourge of drugs yields disastrous consequences on the health of young people, the well-being of the family, the spread of crime and the destruction of economies by financial flows of obscure origins”

20. The above remark is aptly true in the society that we are now living where the menace of drugs is threatening to destroy lives and society. Indeed, young people are most vulnerable to this threat and many a time, have been seen to fall prey to the same. It is incumbent upon the society as well as courts to combat this menace in whatever possible way and although, due procedure of law has to be followed, in drug related cases, the



Investigating Agencies and Courts has to be given wide latitude in napping or bringing any possible accused to book.”

8. It is the submission of the learned AAG that findings would reveal the involvement of the accused person in the case and as such, he has to be tried for the offence committed. This being the case, at this stage, this Court may not release the accused on bail and this petition may be disposed of accordingly.

9. This Court has considered the submission made by the parties, facts need not be repeated except to note that the accused person in question is facing trial in an offence under NDPS Act. Needless to say, the offence involved is serious in nature and needs to be dealt with in strict compliance with the relevant procedure of law.

10. As far as the reference of the learned counsel for the applicant to the case of Kishore Bira (supra), this Court is in agreement with the observations made by the Hon’ble Supreme Court quoted therein. However, the key word in the quoted portion to be noted is the word “proof”. As far as proof is concerned, at this point of time, this Court cannot come to any conclusion as to whether there is any proof for or against the accused person in question. It is a matter of trial where evidence has to be led in this regard. Be that as it may, considering the submission of the learned AAG, where it is submitted that there are only 3(three) witnesses in the case which can be presumed that the trial may not be prolonged unnecessarily, therefore, it would be just and proper for the prosecution to prove its case and similarly for the defence/accused to disprove the charges.



11. It is also the observation of this Court that the case before the trial court is for consideration of charges, the accused is given the opportunity to state his case before the trial court before consideration of such charges and necessary orders will follow as to whether he is liable to be discharged or not.

12. In view of the observation made herein above, this Court is not inclined to allow this petition at this point of time. It is hereby dismissed.

13. Petition disposed of. No costs.

Judge