



Serial No. 09
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

BA No. 13 of 2025

Date of Decision: 11.03.2025

Shri. Sanju Singh
S/o Shri. Nirmal Singh
R/o House No-38, Harijan Colony
Shillong-793001
East Khasi Hills District, Meghalaya

.....Applicant

-Versus-

State of Meghalaya
Through the Superintendent of Police
East Jaintia Hills District, Meghalaya

.....Opposite Party

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioner/Appellant(s) : Mr. M.A. Laitmon, Adv.

For the Respondent(s) : Mr. K. Khan, P.P with
Mr. S. Sengupta, Addl. P.P

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| 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. M.A. Laitmon, learned counsel for the applicant who has submitted that the applicant herein was accused of being in possession of alleged contraband substance-orange/pink colour tablets which were seized by the police, found contained in three brown packets which packets were retrieved from a black colour backpack (labelled Lenovo).
2. The background story of the case is that the applicant was proceeding from Silchar to Shillong in a Night Super Bus bearing registration No. AR 20 9990. In the early morning hours of 01.11.2023 the said bus was detained by the police at Ladrymbai Datsimpein on the NH-06 in the East Jaintia Hills and on search being made the said contraband substance was found from a black colour backpack (labelled Lenovo) which allegedly belonged to the applicant.
3. Accordingly, a case was registered as Khliehriat P.S. Case No. 84(11) 2023 under Section 22(c)/29 NDPS Act and on investigation being conducted the Investigating Officer (IO) in due course had filed the final report including the chargesheet with the opinion that a prima facie case under Section 22(c) NDPS Act is found well established against the applicant herein and he is made to stand trial. The stage of the case is for recording of evidence of the prosecution witnesses wherein only one witness has been examined so far.
4. The learned counsel has submitted that the applicant is not at all involved in the alleged offence inasmuch as the said black colour



backpack seized by the police does not belong to him and he was never in conscious possession of the same. In fact, the version of the police is that the backpack in question was seized from the luggage rack of the said bus. The applicant being one of the many passengers in the bus numbering about 20 or more and his seat No. was 28, therefore, the said backpack could have belonged to any of the passengers.

5. However, the only shred of evidence relied upon by the IO is the alleged statement of the handyman of the said bus Shri. Rahim Uddin who has stated before the police that he saw the applicant with the two backpacks while entering the bus. It may be pointed out that in due course, the said Rahim Uddin was dropped as the prosecution witness and as such, his statement given before the IO could not have been relied upon during the trial, submits the learned counsel.

6. The learned counsel has further submitted that now that the case has proceeded for recording of evidence, in the evidence of PW1 the complainant, he has again, relied on the statement of the said handyman to say that the bag containing the contraband belonged to the applicant herein. However, in his cross-examination, this witness has admitted “...*that the contraband seized was not found from the physical possession of the accused...*” This will only fortify the fact that the applicant cannot be linked to the said seizure of the alleged contraband substance.

7. The fact that the applicant has been in custody for more than one year four months and the trial is not likely to be concluded in the



near future, coupled with the fact that there is no concrete evidence of the involvement of the applicant/accused as far as the alleged offence is concerned, the applicant may therefore be allowed to be enlarged on bail.

8. Per contra, Mr. K. Khan, learned P.P while opposing the prayer made in this application has submitted that according to the seizure memo found at page 26 of this application at Sl. No. 5 under the heading “*From whom the seizure was made*”, the name of the applicant has been entered. At Sl. No. 7 under the heading “*Particular of seizure(s)*”, among others, 2.771 kg of suspected Amphetamine tablets has been indicated as seized.

9. Again, the learned P.P has led this Court to the evidence of PW1 to say that in his examination-in-chief he has clearly stated that the two bags in question were found along with him, meaning the applicant herein. The two bags belonging to the applicant/accused being identified by the handyman of the said Night Bus, Shri. Rahim Uddin.

10. The learned P.P while justifying why the said handyman Shri. Rahim Uddin was dropped from the list of witnesses, has submitted that firstly, the said witness is no longer in the country and has gone to Dubai and as such, may not be able to appear before the trial court. Secondly, it is asserted that the prosecution may not place much reliance on the evidence of the said handyman inasmuch as he was the person who had identified the two bags as those belonging to the applicant but could not say for sure what was contained in the bags and as such his evidence



could be used as corroboration, if nothing else, the main piece of evidence being that of the complainant/PW1.

11. In view of the above, the learned P.P has submitted that the applicant has not been able to make out a case for grant of bail.

12. While considering the case of the parties herein, the applicant admittedly is in custody for more than one year four months being accused of committing an offence punishable under Section 22(c) of the NDPS Act, 1985.

13. Admittedly, the stage of the case is for recording of the evidence of the prosecution's witnesses stated to be 12 of them with one witness dropped and only one being examined so far as PW1.

14. The applicant had preferred two bail applications before the trial court which were rejected for the reasons stated in the related orders. However, it may be reminded that for an offence punishable under Section 22(c) of the Act, any prayer for grant of bail would attract the provision of Section 37 of the said Act.

15. It is well settled that an accused person charged for an offence involving commercial quantity of contraband substance shall not be release on bail unless the Public Prosecutor has been given an opportunity to oppose such application if made, and secondly, if the court is satisfied that there are reasonable grounds to believe that he is not guilty of such offence. Only then can bail be considered. Section 37 NDPS reads as follows:



“[37. Offences to be cognizable and non-bailable.–(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974)–

- (a) every offence punishable under this Act shall be cognizable;
- (b) no person accused of an offence punishable for offences under section 19 or section 24 or section 27A and also for offences involving commercial quantity shall be released on bail or on his own bond unless–
 - (i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and
 - (ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that his is not likely to commit any offence while on bail.

(2) The limitations on granting of bail specified in clause (b) of sub-section (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force, on granting of bail.]”

16. Facts of the case as indicated above need not be repeated, however, this Court has observed that the prosecution has not been able to definitely pinpoint the fact that the said black backpack containing the contraband substance was seized from the conscious possession of the applicant herein.

17. The learned P.P has placed heavy reliance on the evidence of the PW1 to say that this witness has clearly stated that the said bags were seized from the possession of the applicant herein. However, the learned counsel for the applicant has pointed out that this witness in his cross-examination has also stated that he has no knowledge from where



the contraband was seized from inside the bus and also that the same was not found from the physical possession of the applicant. At this juncture, what can be construed is that the seized contraband was not found from the conscious possession of the applicant.

18. At this point of time, this Court is of the considered opinion that there is reasonable ground to believe that the applicant is not guilty of the alleged offence. Thus, the embargo imposed by Section 37 as far as consideration of bail is concerned is lifted under the facts and circumstances of the case of the applicant.

19. Time and again, the Hon'ble Supreme Court in a catena of judgments has liberally considered the grant of bail to an accused involved in offences under the NDPS Act where the provision of Section 37 is in vogue on the ground that the accused person has been incarcerated in custody for a prolong period of time and the trial seemingly not likely to be completed in the near future. This is one such case which falls under such category.

20. Accordingly, at this stage, this Court is inclined to allow the prayer made in this application. The applicant/accused person is directed to be release on bail on the following conditions that:

- i. He shall not abscond or tamper with the evidence and witnesses;
- ii. He shall not leave the jurisdiction of Meghalaya without the prior permission of the learned trial court;



- iii. He shall appear before the trial court as and when required; and
- iv. He shall bind himself on a bond of ₹ 50,000/- (rupees fifty thousand) only with one surety of like amount to the satisfaction of the learned trial judge.

21. It is to be reminded that the observation and opinion of this Court is based on the factual situation as on date. it is not an expression on the merits of the case before the trial court and as such it is expected that the trial court shall not be influenced or swayed by the observation made herein which are done so only for the purpose of bail.

22. In view of the above, this application is disposed of accordingly.

Judge