



Serial No. 03
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

BA. No. 37 of 2025

Date of Decision: 05.08.2025

Smti. Aisha Khatoon @ Pahari
W/o (L) Md. Amir Hussain of
Lower Paltan Bazar, Naspati
Ghari, Jhalupara, Shillong, East
Khasi Hills District, Meghalaya
Presently lodged in District Prisons
& Correctional Home at Shillong.

..... **Petitioner**

- Vs -

The State of Meghalaya
Represented by its Commissioner
and Secretary (Home), Shillong.

..... **Respondent**

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioner/Appellant(s)	:	Mr. S. Pandit, Adv. Ms. S.D. Sangma, Adv.
For the Respondent(s)	:	Mr. K. Khan, PP with Mr. A.H. Kharwanlang, Addl. PP. Mr. S. Sengupta, Addl. PP.

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



JUDGMENT AND ORDER (ORAL)

1. Heard Mr. S. Pandit, learned counsel for the petitioner, who has submitted that the petitioner was arrested by the police on 25.09.2024 from her residence at Lower Paltan Bazaar, Jhalupara, Shillong for an alleged recovery and seizure of contraband substance suspected to be heroin weighing 3.67 grams from her house and 6.05 grams from a place nearby a Paan shop, whereupon, on an FIR being lodged in this regard, Lumdiengjri P.S. Case No. 103 (09) 2024 under Section 21(b)/27A NDPS Act was registered.

2. On investigation launched, the Investigating Officer has finally filed the final report and charge sheet No. 27 of 2024 dated 30.12.2024 finding well-established prima facie case made out against the accused/petitioner for the offence punishable under Section 21(b)/27A of the NDPS Act. The Trial Court taking cognizance of the case, has registered the same as CrI. NDPS Case No. 1 of 2025 and charges under the aforesaid sections was framed on 21.05.2025. The case is proceeding for recording of prosecution's witnesses, for which till date, two out of eleven witnesses were examined and discharged.

3. The learned counsel has also submitted that vide order dated 31.01.2025, the competent authority had passed a detention order against the



petitioner under Section 3(1) of Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 and she was accordingly placed under preventive detention for three months, the grounds being that she was involved in three cases registered under the NDPS Act, where in one of such cases, Lumdiengjri P.S. Case No. 34 (4) 2015, she was acquitted way back on 27.05.2022 and another being Mawlai P.S. Case No. 47 (05) 2023 which is pending before the Trial Court. However, the period of the said preventive detention has expired, submits the learned counsel.

4. It is also the submission of the learned counsel that having been arrested in the said Lumdiengjri P.S. Case No. 34 (4) 2015, an application for cancellation of bail in connection with Mawlai P.S. Case No. 47 (5) 2023 (Crl. NDPS Case No. 46 of 2023) on the ground that the petitioner had violated bail conditions, was preferred before the learned Trial Court. The court after hearing the parties vide order dated 27.02.2025, had accordingly cancelled the previous bail granted to the petitioner. Against this order, the petitioner has approached this Court by way of Crl.Petn. No. 14 of 2025, but the same was dismissed vide order dated 28.03.2025, and as such, the petitioner is still in custody till date.

5. Again, the learned counsel has submitted that the petitioner has filed several bail applications before the Trial Court, but each and every one



of such petitions have been rejected, the last bail application being rejected vide order dated 03.07.2025 which has then prompted the petitioner to approach this Court with this instant bail application.

6. It is the submission of the learned counsel that this application is preferred, seeking grant of bail on behalf of the petitioner on the ground that she has been in custody for more than ten months or so, and there is no likelihood of the trial concluding in the near future since only two out of eleven cited witnesses have been examined by the court as prosecution's witnesses and keeping the petitioner in continued custodial detention, would not serve any purpose.

7. It is the contention of the learned counsel that the petitioner is allegedly involved in connection with seizure of an intermediate quantity of contraband substance (heroin) and as such, the rigors of section 37 NDPS Act is not applicable in her case. However, one of the charges framed against the petitioner is for punishment of an offence committed under Section 27A which speaks of financing illicit traffic and harbouring offenders and the presence of such a provision, would attract the corresponding provision of section 37 for which grant of bail is made difficult given the negative connotation found in the said provision.

8. The learned counsel has also submitted that on perusal of the



charge sheet, there is found not even an iota of evidence to prove that the petitioner is involved in either financing or harbouring any person engaged in the illicit drugs business. The only connection that the prosecution has sought to link the petitioner as far as the provision of section 27A is concerned is the alleged statement of one person namely, Smti. Nur Jahan Begum, who runs a Paan shop located next to the house of the petitioner, and who has informed the police about the suspected heroin which was then recovered from the house of the petitioner. However, this is not evidence at all to enable the prosecution or the Investigating Officer for that matter to conclude that the petitioner is guilty for the offence under Section 27A.

9. This being the case, the learned counsel has submitted that the alleged recovery of the said contraband substance being of intermediate quantity, the petitioner is therefore entitled to be granted bail, considering the fact that she is in custody for the last ten months or so.

10. The petitioner being a permanent resident of the State of Meghalaya, if enlarged on bail, she would comply with any conditions to be imposed by this Court, for which prayer is accordingly made herein, submits the learned counsel.

11. Mr. K. Khan, learned PP assisted by Mr. A.H. Kharwanlang and Mr. S. Sengupta, learned Addl. PP appearing for the State respondent has



submitted that the offence involved is in connection with a case under the NDPS Act, and as admitted, the petitioner is involved in another case at the present time. In this regard, there is no guarantee that she may not commit similar offence, if enlarged on bail, considering the fact that she has been involved in about three known cases where her involvement in the possession of the contraband substance (heroin) has been established.

12. It is also the submission of the learned PP that there is prima facie evidence to attract the provision of section 27A as far as the petitioner is concerned and in due course, the prosecution will prove the same before the Trial Court, therefore, at this stage, it may not be prudent for this Court to return any finding on this aspect as the trial is going on. In the present circumstances, the provision of section 37 being duly attracted in this case, the petitioner has to satisfy this Court that she is innocent and that even, if released on bail, she will not commit any other offences.

13. The learned PP has also submitted that the fact that the petitioner is involved in another case of similar nature involving identical provision of the NDPS Act, she is therefore disqualified to even seek contrary relief, vis-à-vis, section 37 of the said Act. As such, at this stage, the petitioner has not been able to make out a case for grant of bail.

14. On consideration of the submission made by the learned counsel



for the rival parties, facts as has been pointed out which have not been controverted by either side, is that the petitioner is undergoing trial in connection with CrI. NDPS Case No. 1 of 2025 as well as in CrI. NDPS Case No. 46 of 2023 for an offence under Section 21(b) of the NDPS Act which provides for punishment inter alia, for possession of manufactured drugs, for such contravention involving quantity less than commercial quantity, but greater than small quantity, therefore being of intermediate quantity, the sentence being rigorous imprisonment for a term which may extend upto 10(ten) years. Additionally, in CrI. NDPS Case No. 1 of 2025, the petitioner is also charged for an offence punishable under Section 27A of the Act.

15. In this regard, this Court has also perused the materials on record including the charge sheet and has prima facie failed to find any link or even evidence to prove that the petitioner has committed an offence under Section 27A of the Act. However, such observation is made only for the purpose of this instant application and should not affect the opinion of the Trial Court which will consider the case of the parties in its totality on the basis of evidence adduced.

16. This observation would therefore remove the presence of the provision of section 37 of the Act as far as the case of the petitioner herein is involved. She can therefore be considered for bail under the general



principles of jail jurisprudence.

17. Again, it may not be out of place to refer to the principles of bail jurisprudence, where more often than not, a court while considering a prayer made for grant of bail is guided by the adage, “bail and not jail”. However, a court while considering an application for grant of bail, is guided by certain factors and parameters to be followed before passing any effective order in such regard. Consideration of criminal antecedent of the applicant, likelihood of such applicant repeating commission of a similar offence and the like are also to be considered.

18. Though, as has been submitted and accepted by this Court that the provision of section 37 is not applicable to the case of the petitioner herein, however, it cannot be said that the principles or the spirit of the said provision is not applicable. Another aspect of the matter to be considered more particularly in cases of this kind where consumption, possession and trafficking or peddling of contraband narcotic substances has affected not only a particular individual, but has a cascading effect on members of the society, particularly youths, the ramification of which has invaded personal and private spaces of citizens, incidents of looting, burglary and theft being example of the same, therefore the Court, while considering prayer of the kind made in this instant petition has to balance individual rights as against



societal interest.

19. It is also to be noted that the stage of the case is for recording of evidence and admittedly two out of eleven witnesses have been examined and discharged. Therefore, since there is no inordinate delay in the ongoing trial, the plea of delay of the same cannot be accepted by this Court at the present.

20. This being the case, under the facts and circumstances stated hereinabove, at this point of time, this Court is not inclined to allow this petition. The same is hereby dismissed as devoid of merits.

21. Petition disposed of. No costs.

Judge