



Serial No. 01
Supplementary List

HIGH COURT OF MEGHALAYA
AT SHILLONG

BA No. 40 of 2025

Date of Decision: 21.08.2025

Shri. Ronald Kyndiah,
 Aged about 28 years,
 S/o (L) H. Umdor, R/o- Lower Mawprem,
 Sngithiang Shillong, East Khasi Hills District,
 Meghalaya.

.....Petitioner

-Versus-

1. The State of Meghalaya
 Represented by Secretary Home (Police)
 Government of Meghalaya.
2. The Superintendent of Police,
 Ri-Bhoi District, Meghalaya.

.....Respondents

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

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

Appearance:

For the Petitioner/Appellant(s)	: Mr. S.S. Yadav, Adv. Mr. S. Purkayastha, Adv.
For the Respondent(s)	: Mr. K. Khan, P.P with Mr. A.H. Kharwanlang, Addl. P.P

**ORDER (ORAL)**

1. Heard Mr. S.S. Yadav, learned counsel who has submitted that the petitioner has approached this Court by way of this application under Section 483 of the BNSS with a prayer for grant of bail since he was arrested on 01.07.2023 in connection with Umsning P.S. Case No. 21(07) 2023 under Section 21(c) and 29 of the NDPS Act.

2. The learned counsel has submitted that the case has since been charge sheeted and the learned Special Judge (NDPS), Ri-Bhoi District, Nongpoh had taken cognizance of the same in CrI. (NDPS) Case No. 23 of 2023. The stage of the case is for recording of evidence of the prosecution's witnesses.

3. The learned counsel has also fairly admitted that this is the second bail application filed before this Court, the first one was dismissed by this Court vide order dated 26.06.2025. Since then, certain material witnesses have been examined in the case, their deposition of which has prompted the petitioner to approach this Court with a prayer for grant of bail, centered on the merits of the case.

4. It is the further submission of the learned counsel that on perusal of the evidence rendered by PW-2, what can be seen is that this witness has categorically stated in his examination-in-chief that on 30.06.2023 at around 8:00 p.m. while he was at home, the police came to his house and asked him to accompany them to the house of Bah Kyndiah (petitioner herein) located at Lumkeni. On reaching the said house, the police started a search of the house to recover any suspected contraband. However, no such contraband



was found and three policemen stayed at the said house overnight.

5. Similarly, PW-3 in his examination-in-chief has also stated that on 30.06.2023 at about 9:00 p.m. or so while he was at home, he received a phone call from the village headman requesting him to come to his house. From there along with the headman he went to the house of Bah Kyndiah whereupon he saw the police conducting a search of the said compound and house of the petitioner. This witness was at the said house for about two and half hours and since nothing was recovered by the police, he went back home.

6. PW-2 has further stated that on the following day, that is, 01.07.2023 at about 8:00 a.m. or so he was instructed by the police to go back to the house of the petitioner and he along with members of the village were present at about 9:00 a.m. when the police again started searching the place in and around the compound. The police then found one big tin box from outside the compound of the house of the petitioner hidden in the bushes. This witness has reiterated that even on 01.07.2023 nothing was recovered from the house of the petitioner.

7. PW-3 has also stated something in the same line when he said that on 01.07.2023 he was again called to go to the house of the petitioner and at about 8:30 a.m. to 8:45 a.m. when he arrived at the house, he saw some police personnel were still conducting search inside and outside the house. This witness also saw the police recovered one big tin box from outside the compound of the house of the petitioner.

8. The learned counsel has also submitted that PW-1 who is the complainant and a police official in his deposition before the court has stated



that on 01.07.2023 at 8:00 a.m. the search was conducted. At around 1:00 p.m. the sniffer dog gave a signal toward the jungle area at the entrance of the farm house and when the search party proceeded toward the jungle area, one iron box was recovered.

9. The learned counsel at this point of time has referred to the authorization certificate under Section 41(2) of the NDPS Act issued by Shri Ishan Gupta, IPS Assistant Superintendent of Police, Ri-Bhoi District, wherein SI Kenneth Nongsiej of Umsning P.S. was authorised to conduct house/body search and seizure over the farmhouse and premises of Shri. Ramul Kyndiah S/o (L) R. Pde at Lumkeni, Umran, Niangbyrnai, Ri-Bhoi District. The said authorization was dated 01.07.2023 at about 2:30 p.m. This, according to the learned counsel is a clear violation of the provision of Section 41(2) of the NDPS Act when the search was already conducted on 30.06.2023 and in the morning hours of 01.07.2023, while the authorization came well after the search and seizure was already made.

10. The learned counsel went on to submit that the chain of events proceeded to the point where the police brought the box to the compound of the house of the petitioner and broke the lock of the said box. Inside the box were found small boxes of the size of soap boxes and the police placed the said boxes in one place on top of the cloth. PW-2 who was at the scene managed to see only two small boxes. He was asked by the police to sign on some papers but he did not see the contents of the boxes. PW-3 has also stated that he has been made one of the seizure witnesses, but actually he does not know how many boxes were taken out of the big tin box since only two small boxes were shown to him and he saw that the contents inside the boxes is a green-coloured powder.



11. In all this, the learned counsel has submitted that what is relevant for consideration is the fact that evidence on record has proved that no seizure of the alleged contraband substance was ever made from the possession of the petitioner and as such, prima facie he is deemed not to be guilty of the offence alleged, therefore, the rigors of section 37 of the NDPS Act cannot be employed in his case. In this regard, the case of Mohd Muslim @ Hussain v. State (NCT of Delhi) reported in AIR 2023 SC 1648 has been cited, wherein the Hon'ble Supreme Court has observed at para 18 and 19 as follows:

“18. The conditions which courts have to be cognizant of are that there are reasonable grounds for believing that the accused is “not guilty of such offence” and that he is not likely to commit any offence while on bail. What is meant by “not guilty” when all the evidence is not before the court? It can only be a prima facie determination. That places the court’s discretion within a very narrow margin. Given the mandate of the general law on bails (Sections 436, 437 and 439, CrPC) which classify offences based on their gravity, and instruct that certain serious crimes have to be dealt with differently while considering bail applications, the additional condition that the court should be satisfied that the accused (who is in law presumed to be innocent) is not guilty, has to be interpreted reasonably...”

19. ...Therefore, the only manner in which such special conditions as enacted under Section 37 can be considered within constitutional parameters is where the court is reasonably satisfied on a prima facie look at the material on record (whenever the bail application is made) that the accused is not guilty. Any other interpretation, would result in complete denial of the bail to a person accused of offences such as those enacted under Section 37 of the NDPS Act.”

12. The fact that the petitioner is in custody for more than two years, that is, from the date he was arrested on 01.07.2023 and out of ten witnesses,



only three have been examined so far, has led to the learned counsel to refer to the case of Shri. Sanju Singh v. State of Meghalaya, wherein vide order dated 11.03.2025 passed in BA No. 13 of 2025, this Court has granted bail to the petitioner therein, who was charged with the offence punishable under Section 22(c) of the NDPS Act and who in course of investigation was found not to be in conscious possession of any contraband substance having been in custody for about 1 year 4 months. The petitioner in this case facing similar circumstances and being in custody for more than 2 years, he may therefore be enlarged on bail, submits the learned counsel.

13. Per contra, Mr. K. Khan, learned P.P has countered the submission and contention made by the learned counsel for the petitioner by submitting that the ground for grant of bail in this case is mainly on delay of proceedings before the Trial Court. However, the learned P.P has referred to the order dated 26.06.2025 passed by this Court in BA No. 30 of 2025 also involving the petitioner herein in the same case, wherein on an application for grant of bail on account of delay, this Court at para 10 of the same has listed the many number of dates when the case was taken up by the trial court and has noted that there was no lapse on the part of the prosecution to delay such proceedings. As such, it is submitted that the petitioner cannot come with the plea of delay in this instant application.

14. It is further submitted that the issue in the Sanju Singh's case (supra) is delay and conscious possession, whereas in this case it is not so, as the issue of delay has been dealt with hereinabove and what has been canvassed by the petitioner is with regard to the contents of the deposition of the seizure witnesses, as such there is no similarity in the two cases.



15. The learned P.P has also submitted that the law is well settled as to what is required to be argued as regard grant of bail, pre-chargesheet and post-chargesheet period. The case of Vilas Pandurang Pawar & Anr v. State of Maharashtra & Ors. (2012) 8 SCC 795 para 10 was cited, though the order was passed in a case under the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989, the learned PP has further submitted that it is pertinent to note that the observation of the Apex Court in this para is relevant to the case in hand, inasmuch as it was observed that “...Moreover, while considering the application for bail, scope for appreciation of evidence and other material on record is limited. The court is not expected to indulge in critical analysis of the evidence on record...”.

16. Therefore, what the seizure witnesses has stated is the factual aspect of the matter when they have consistently stated that the police have seized the tin box from outside the compound of the house of the petitioner and the same was brought inside the compound whereupon on being opened, the smaller boxes were found containing power. This piece of evidence was found consistent with the record of the Panchnama (annexed as Annexure XI A in this petition) wherein it was stated that “At around 5:30pm, the sniffer dogs detected 1(one) Aluminium Box concealed in the bushes, suspected to contained illicit contrabands. The box was opened in the premises of the GD and witnesses and found 70(seventy) nos of soap boxes were found to contain suspected contrabands inside.”

17. The learned P.P has laid stressed on the issue of the relevancy of the evidence of the seizure witnesses which cannot be made the basis for a prima facie finding in favour of the accused/petitioner and has submitted that in the final analysis of the case there would be other witnesses who would



support the case of the prosecution and therefore the fact that the petitioner has highlighted the alleged discrepancies in the evidence of the seizure witness to secure bail at this point of time cannot be the ground for consideration of the same.

18. This Court has considered the submission made for and against the grant of bail on behalf of the petitioner herein. Facts as stated above is that the petitioner was arrested in connection with an offence punishable under Section 22(c) of the NDPS Act which involves possession of commercial quantity of psychotropic substances, the punishment of which shall not be less than 10 years. In such a situation, when a prayer is made for grant of bail the provision of Section 37 of the NDPS Act is attracted.

19. Needless to say, for consideration of bail involving Section 37 of the Act the approach of the court is not to grant bail except on the ground that the court is satisfied that there are reasonable grounds for believing that the accused is not guilty of such offence and that he is not likely to commit any offence while on bail.

20. The rigors of Section 37 invariably have prevented the courts to grant bail to an accused person, if in course of investigation or trial nothing is presented in favour of such accused person to dispel the doubt or presumption that he is indeed guilty of such offence.

21. However, there are exception to this rule even if the provision of Section 37 is applicable in a given case, one of such exceptions is the consideration for grant of bail if prolonged or unnecessary delay in the proceedings not attributable to the accused has been occasioned. The other is the aspect of reasonable grounds to believe that the accused is not guilty



of such offence.

22. Now, what are reasonable grounds have been explained by the Apex Court in a number of judgments, the most succinct one is that which is found in the case of *Union of India v. Shri Shiv Shanker Kesari* reported in (2007) 7 SCC 798, wherein the following was held:

“7. The expression used in Section 37(1)(b)(ii) is "reasonable grounds". The expression means something more than prima facie grounds. It connotes substantial probable causes for believing that the accused is not guilty of the offence charged and this reasonable belief contemplated in turn points to existence of such facts and circumstances as are sufficient in themselves to justify recording of satisfaction that the accused is not guilty of the offence charged.

8. The word "reasonable" has in law the prima facie meaning of reasonable in regard to those circumstances of which the actor, called on to act reasonably, knows or ought to know. It is difficult to give an exact definition of the word “reasonable”.

“7... In Stroud's Judicial Dictionary, 4th Edn., p. 2258 states that it would be unreasonable to expect an exact definition of the word ‘reasonable’. Reason varies in its conclusions according to the idiosyncrasy of the individual, and the times and circumstances in which he thinks. The reasoning which built up the old scholastic logic sounds now like the jingling of a child's toy.”

(See: *Municipal Corpn. of Delhi v. Jagan Nath Ashok Kumar* [(1987) 4 SCC 497] (SCC p. 504, para 7) and *Gujarat Water Supply and Sewerage Board v. Unique Erectors (Gujarat) (P) Ltd.* [(1989) 1 SCC 532].

9. “9...It is often said that ‘an attempt to give a specific meaning to the word “reasonable” is trying to count what is not number and measure what is not space’. The author of *Words and Phrases* (Permanent Edn.) has quoted from *Nice & Schreiber*, in re [123 F. 987 at p. 988] to give a plausible meaning for the said word. He says

‘the expression “reasonable” is a relative term, and the facts of



the particular controversy must be considered before the question as to what constitutes reasonable can be determined’.

It is not meant to be expedient or convenient but certainly something more than that.”

10. The word “reasonable” signifies "in accordance with reason". In the ultimate analysis it is a question of fact, whether a particular act is reasonable or not depends on the circumstances in a given situation. (See *Municipal Corpn. of Greater Mumbai v. Kamla Mills Ltd.* [(2003) 6 SCC 315].

11. The Court while considering the application for bail with reference to Section 37 of the Act is not called upon to record a finding of not guilty. It is for the limited purpose essentially confined to the question of releasing the accused on bail that the Court is called upon to see if there are reasonable grounds for believing that the accused is not guilty and records its satisfaction about the existence of such grounds. But the Court has not to consider the matter as if it is pronouncing a judgment of acquittal and recording a finding of not guilty.”

23. Coming back to the case in hand, what is observed is that the petitioner having been arrested in the said case and undergoing trial, the stage of the trial is for recording of the evidence of the prosecution witnesses of which 3 out of 10 have been examined. The petitioner taking note of the deposition of the three witnesses and finding that the statements made by these witnesses have, for the moment, failed to implicate the petitioner as far as possession of the alleged contraband is concerned, therefore he has approached this Court with this petition seeking for grant of bail.

24. This Court, even if the authority cited by the learned P.P that is, the case of *Vilas Pandurang Pawar*(supra) as also the proposition found in the case of *Shiv Shankar Kesari*(supra) is taken into consideration, there is no reason to indulge in critical analysis of the evidence on record, as on a bare reading of the same, the evidence of PW-2 and PW-3 have amply



cleared the air that the petitioner cannot be linked to the discovery of the alleged contraband substance found in the tin box, firstly, not from within the compound of the house of the petitioner, if at all, and secondly, certainly not from his physical possession or even conscious possession.

25. To restate what has been cited at para 19 of the Mohd Muslim case(supra), this Court is reasonably satisfied on a prima facie look at the material on record that the accused/petitioner is not guilty, that is, at the time when this bail application was preferred. It remains to be seen as to what would be the final analysis at the conclusion of the trial, for which the Trial Court is to take a call upon appreciation of the body of evidence then. For the present, suffice it to say that the petitioner has made out a case for grant of bail, the contention of the learned P.P not found to be wholly convincing to decide otherwise.

26. In view of the above, this application is hereby allowed. The accused/petitioner is directed to be released on bail, if not wanted in any other case, on the following conditions:

- i. That he shall not abscond or tamper with the witnesses;
- ii. That he shall attend court as and when called for;
- iii. That he shall not leave the jurisdiction of Meghalaya, except with due permission of the court concerned; and
- iv. That he shall bind himself on a bond of ₹ 50,000/- (Rupees fifty thousand) only along with one surety of like amount to the satisfaction of the trial court.



27. Petition disposed of. No costs.

Judge