

THE HIGH COURT OF TRIPURA
AGARTALA

B.A. 103 of 2015

Smt. Pali Majumder (Dey),
W/O Sri Tutan Dey @ Mantta,
Resident of 79 Tilla/G.B. Hospital,
P.S. – N.C.C. – Tripura, Agartala,
District – West Tripura.

..... *Petitioner*

For and on behalf of
Sri Tutan Dey,
S/O Lt. Indra Mohan Dey,
Resident of 79 Tilla, G.B. Hospital,
P.S. – N.C.C., Agartala,
District – West Tripura.

..... *Accused person*

- Vs. -

The State of Tripura.

..... *Respondent*

BEFORE
HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA

For the Petitioner : Mr. B. Debbarma, Advocate.

For the respondent : Mr. R.C. Debnath, Addl. P.P.

Date of hearing & : 24.09.2015.
delivery of
Judgment & order

Whether fit for : Yes.
Reporting

JUDGMENT & ORDER (ORAL)

This is a rather unusual case in which search of the
house of the petitioner was conducted to recover certain drugs

allegedly stored by him and during this course of the search not only were some drugs recovered but 6 nos. of 9 mm ammunition were also recovered.

2. The petitioner had earlier filed this petition also for quashing of the FIR but that prayer was not pressed as is reflected in the order dated 21.09.2015 with liberty reserved to the petitioner to file separate petition for quashing of the FIR.

3. The facts of this case as reflected in the FIR itself show that the informant Himadri Sarkar, Officer-in-Charge of the GB TOP received secret information at about 10.40 a.m. on 10.06.2015 from his secret source that the petitioner was in possession of and was storing drugs for illegal business purposes. He recorded the entry and thereafter, carried out search of the house of the petitioner. During the search, some drugs were recovered and 6 nos. of 9 mm ammunition were recovered. The petitioner was arrested on 10.06.2015 on the date when the raid was conducted and he is behind bars for more than 3 months.

4. Mr. B. Debbarma, learned counsel for the petitioner contends that the search itself is illegal. He submits that under the Drugs and Cosmetics Act, it is only the Drugs Inspector, who can carry out the search. He also submits that no search could have been conducted and the house of the petitioner could not have been searched without a search warrant. His next submission is

that even if the recovery of the ammunition is accepted to be correct this is only an offence punishable under Section 3 and therefore, bail should be granted.

5. Normally, this Court need not pass a detailed order in such a case but the manner in which the search has been conducted has forced me to pass a more detailed order.

6. According to the Police Officer, he received secret information only about drugs being kept in the house of the accused. Under the Code of Criminal Procedure especially, Section 100 thereof, search of a house is normally, to be conducted only after search warrant has been obtained in terms of Section 93, 94 or 96 of the Code of Criminal Procedure. The house of any citizen is his castle. Article 21 of the Constitution protects the life, liberty and privacy of a citizen. This castle can be breached only in accordance with procedure established by law. The police must act in accordance with law and cannot take the law into their own hands.

7. In the present case, even as per the information recorded in the FIR and the G.D. Entry, the police officials had no reason to believe that any offence other than an offence under the Drugs and Cosmetics Act, 1940 had been committed. The information before them related only to drugs covered under the Drugs and Cosmetics Act. The search was conducted under the

Code of Criminal Procedure. The only provision in the Cr.P.C., which permits a police officer to conduct a search without a search warrant is Section 165 of the Cr.P.C., relevant portion of which reads as follows:-

"165. Search by police officer.-(1) Whenever an officer in charge of a police station or a police officer making an investigation has reasonable grounds for believing that anything necessary for the purposes of an investigation into any offence which he is authorised to investigate may be found in any place within the limits of the police station of which he is in charge, or to which he is attached, and that such thing cannot in his opinion be otherwise obtained without undue delay, such officer may, after recording in writing the grounds of his belief and specifying in such writing, so far as possible, the thing for which search is to be made, search, or cause search to be made, for such thing in any place within the limits of such station."

8. A bare reading of this provision shows that whenever an Officer-in-charge of a Police Station or a Police Officer making an investigation has reasonable grounds to believe that for the purposes of an investigation into any offence which he is authorized to investigate the search of any premises is required and that obtaining search warrant may cause unnecessary delay and permit the offending person from running away with the offensive material he can carry out the search without a search warrant. He, however, must record his grounds and reasons of belief.

9. In the present case, the Police Officer did not even care to notice that he had no jurisdiction or authority or power to investigate a matter under the Drugs and Cosmetics Act, 1940.

That power lies only with the Drugs Inspector and not with the Police Officer. Since he did not have this power he should not have carried out any search.

10. Be that as it may, the search was carried out and 6 nos. of 9 mm ammunitions recovered along with drugs. As far as the drugs case is concerned that is being dealt separately. As far as the present case is concerned, this is only with regard to the Arms Act. Even if the search be illegal, at this stage of bail, it is not for this Court to decide what will be the effect of this wrong search on the trial. 6 nos. of 9 mm ammunitions have allegedly been recovered which have been kept by the petitioner allegedly in violation of the Arms Act. The prosecution has failed to show that this ammunition is of prohibited bore. Therefore, the offence if any would be under Section 3 of the Act which is not such a serious offence and therefore, I feel that this is a fit case for grant of bail.

11. Therefore, I direct that the accused person namely, Sri Tutan Dey alias Mantta be released on bail on his furnishing bail bond in the sum of Rs.10,000/- (rupees ten thousand) with one surety in the like amount to the satisfaction of the learned trial Court undertaking therein:-

(i) That, the accused is directed not to tamper with or in any manner influence the prosecution witnesses;

(ii) That, the accused shall ensure that no threat directly or indirectly is given to any of the prosecution witnesses;

(iii) The accused is further directed not to cause any hindrance in the investigation;

(iv) The accused shall not leave Tripura without permission of the appropriate Court;

(v) The accused shall appear before the trial Court on each and every date of hearing. In case, he absents himself on any date, then the trial Court shall cancel the bail and the accused shall be arrested. Thereafter, the petitioner shall have to again approach this Court for grant of bail;

(vi) In case, the accused violates any of the conditions or tries to delay the trial, the prosecution shall be at liberty to apply for cancellation of bail.

12. With these observations, the bail application is disposed of.

On the petitioner filing application for supply of the copy on payment of appropriate fees, the copy of the same shall be supplied to the petitioner by tomorrow.

CHIEF JUSTICE

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