IN THE HIGH COURT OF MANIPUR
AT IMPHAL

Bail Appln. No. 9 of 2020

Sei Minthang Touthang aged about 25 years S/o Hemkholun Touthang of Phaijang Village, Saikul Sub-Division, Dist: Kangpokpi, Manipur.

... Petitioner

- Versus -

1. Officer-in-Charge Moirang Police Station, Moirang, P.O & P.S Moirang, District: Bishnupur, Manipur.

... Respondent

with

Bail Application No. 8 of 2020

Smt. Kimlhing Haokip aged about 36 years W/o Tongsei Haokip of Govajang Village, P.O Pangei, P.S Saikul, Distrct: Kangpokpi, Manipur.

…Petitioner

- *Versus –*

Officer-in-charge Moirang Police Station, Moirang, PO & P.S Moirang, District: Bishnupur, Manipur.

…Respondent.

B E F O R E
HON'BLE MR. JUSTICE MV MURALIDARAN

For the petitioners	:: Mr Ch. Dhananjoy, Sr. Adv.
For the respondent.	:: Y. Ashang, PP.
Date of hearing and Reserved for order.	:: 17.07.2020.
Date of judgment & Order.	:: 20.08.2020.

JUDGMENT & ORDER
(CAV)

[1] These petitions have been filed by the petitioners under Section 439 of the Code of Criminal Procedure, 1973 read with Section 37 of ND & PS Act, 1985 to enlarge them on bail in connection with the FIR Case No.24(3)2020 MRG PS registered under Section 18(b)/28&60(3) of ND & PS Act.

[2] Since both the petitions are arising out of the same Crime number and the issue involved is also one and the same, both the petitions are taken up together and disposed of by this common order.

[3] The petitioners were arrayed as accused 1 and 2 and were arrested in relation to the FIR Case No.24(3)2020 MRG PS. Earlier, the petitioners have approached the Special Judge (NDPS), Bishnupur for bail. By an order dated 12.6.2020, the Special Judge, rejected the bail petitions.

[4] The case of the prosecution is that on 25.3.2020 at about 10.10 p.m., while a team of Moirang Police Station were performing duty at Moirang Lamkhal area in connection with the total lock down of Covid-19, a van bearing registration No.MN06LB/2005 was coming from Imphal side towards Churachandpur side along with a female occupant inside the van and on seeing it, the van was stopped and the driver was

questioned as to from which place the occupant inside his vehicle was brought and where the said occupant was leaving and the driver stated that they were coming from Saikul area for picking up of their children, who were staying at School Boarding of Churachandpur. Immediately, the police asked them to get down from the van for verification.

[5] Further case of the prosecution is that, after observing the suspicious nature of the driver and the female occupant that they might possess some drugs and after getting consent from them, the petitioners were searched in the presence of independent witness. Accordingly, when the police searched the petitioners in the presence of independent witness viz., Yumkhaiba Kame Singh, they have found 4 Nos. of plastic packets from the possession of the petitioner Kimlhing Haokip (Petitioner in Bail Application No.8 of 2020) and she had also stated that all packets contain Opium (Kani). In the presence of the said independent witness, the said packets were seized and the police have also seized the van. On enquiry, both the petitioners stated that they were carrying drugs in order to sell at Churachandpur side. Thereafter, after adopting all formalities, the police arrested the petitioners at 10.40 and 10.45 p.m. respectively by preparing arrest memo and sent them to judicial custody.

[6] On the other hand, the case of the petitioners is that they are innocent and have been falsely implicated in this case and in fact, they never committed any offence as alleged by the prosecution nor was there any ground for believing that they have committed the alleged offence.

[7] The learned senior counsel for the petitioners submitted that the petitioner Kimlhing Haokip did not know the alleged seized article from her possession and that the allegations made in the FIR against her has no concrete evidence to prove that she had committed the offence. The learned counsel further submitted that the ground of arrest of the petitioners alleged in the FIR has no basis and the contents in the FIR are concocted by the police themselves.

[8] The learned senior counsel then submitted that the petitioner Kimlhing Haokip is a seven months advance pregnant woman and at this stage a medical care is highly required and also detaining her in the jail is highly risky.

[9] The learned Senior counsel for the petitioners next submitted that as far as the petitioner Sei Minthang Touthang is concerned, he is running a business of transporting passengers by using his vehicle and he did not know the alleged seized article was in his vehicle. He would submit that the petitioner Sei Minthang Touthang is innocent. Stating that the whole FIR is based on false

and concocted stories and detention of the petitioners on the basis of such concocted FIR amounts to violation of human rights as well as the fundamental rights guaranteed under the Constitution of India, he prays for bail to the petitioners.

[10] Per contra, the learned Public Prosecutor submitted that since the petitioners were involved in the commission of crime, releasing them at this stage will hamper the investigation. He would submit that the Special Court, after analysing the materials produced before it and taking note of the allegations levelled against them, has rightly rejected the bail applications.

[11] The learned Public Prosecutor further submitted that the grounds taken by the petitioners for releasing them on bail are not sufficient for granting bail under Section 37 of NDPS Act. He would submit that in criminal jurisprudence more particularly for offences under Special Statute like NDPS Act, the principle of parity is not applicable, as it is to be taken into account as per the role played by each individual accused in committing the alleged offence. Hence, prayed for dismissal of the bail applications.

[12] This Court considered the submissions made by the learned counsel appearing on either side and also perused the materials available on record.

[13] The petitioner Kimlhing Haokip seeking bail mainly on the ground that she is in advanced stage of pregnancy and she require better medical care and at present detaining her in jail is highly risky. The petitioner Sei Minthang Touthang seeking bail on the ground that since the alleged opium was seized from the passenger of the vehicle, who did not know the alleged seized article from her possession. Further, the said petitioner is no way related to the alleged crime.

[14] According to the prosecution, the investigation revealed that the petitioner Kimlhing Haokip was involved for possession and transportation of illegal opium for trying to sell the drugs to some unknown buyers at Churachandpur in connivance with the petitioner Seiminthang Touthang, who is involved in transportation and carrying the petitioner Kimlhing Haokip, who is in possession of the illegal opium.

[15] The Special Court rejected the bail applications of the petitioners vide order dated 12.6.2020 and the operative portion of the order reads thus:

> "*Considered both sides submission along with the materials on record. The accused Kimlhing no doubt as per the report of the MO, Jail is pregnant with 15 weeks and 2 days as on 26.5.2020 and that inspite of the medical treatment and medication with special diet she is reported to be weak and not keeping a good health. However, the alleged recovery of 4 packets ontaining 2.560 kilograms of Opium (Kanl) from the*

possession of he accused persons has well substantiated the accusations against the accused persons that they were transporting the same on the date of the occurrence when the State was under Strict Lockdown, to be sold at Churachandpur. Thus, considering the facts and circumstances of the case having regard to the heinous nature of the alleged offence, I find that it would not be deemed proper to release the accused persons on bail at the present stage of investigation of the case, considering the effect, repercussion and impact that Opium (Kani) has on the society at large and the young in particular. Hence bail application is rejected and disposed of accordingly."

[16] The plea of the petitioners is that the petitioner Kirhlhing Haokip is in advanced stage of pregnancy and she require proper medical care are not disputed by the prosecution. In fact, while rejecting the bail application of the petitioner Kimlhing Haokip, the Special Judge himself categorically stated that the petitioner Kimlhing Haokip is reported to be weak and not keeping a good health. In the order, the Special Judge also stated that as per the medicai report, the petitioner Kimlhing Haokip is pregnant with 15 weeks and 2 days as on 26.5.2020. Now more than two months have gone and more care to be shown on her by providing good medical treatment. Further, she needed help for even domestic work. In the jail though good treatments are providing, taking note of the health condition of the petitioner Kimlhing Haokip and also considering the fact that detaining the petitioner Kimlhing Haokip at present in jail is risky one, this Court is inclined to enlarge her on bail, subject to certain conditions.

[17] As far as the petitioner Sei Minthang Touthang is concerned, he has been arrayed as accused in the instant case, as he drove the van and on production, the van was also seized by the police. According to the prosecution, the petitioner Kimlhing Haokip was involved for possession and transportation of the illegal opium for trying to sell the same to some unknown buyers at Churachandpur area in connivance with the petitioner Sei Minthang Touthang, who is involved in transportation and carrying the petitioner Kimlhing Haokip. Except the aforesaid allegation, there is no whisper about the possession of the alleged seized article by the petitioner Sei Minthang Touthang and no separate recovery was made from him.

[18] In the case of Lakhwinder Singh v. State of Haryana in CRM No.M-11080 of 2016, decided on 21.04.2016, the Punjab and Haryana High Court held that if no recovery was made from the accused persons, the Court ought to have considered and the accused is entitled to the benefit of bail. In Lakhwinder Singh (supra), the Punjab and Haryana High Court held as under:

> *"6. The petitioner is not stated to be involved in any other case under the NDPS Act.*
> *7. No recovery having been affected from the present petitioner, this Court is of the considered view that he is entitled to the benefit of bail."*

[19] In the instant case, as stated supra, no opium was seized from the petitioner Sei Minthang Touthang by the investigating officer or other police officers.

[20] The involvement of the petitioners in the alleged crime by the prosecution in the affidavit in opposition to the bail applications requires evidence and ‘proof. In such circumstances, 'the case of the prosecution that the petitioners were carrying the drugs in order to sell at Churachandpur side cannot be believed at this stage as the same would require cogent oral and documentary evidences.

[21] According to the petitioner in Bail Application No.9 of 2020, he is the sole bread winner of the family and he has to look after his family. Due to arrest, his family members are suffering lot without food. Admittedly, both the petitioners were in jail from 25.03.2020. At this stage, the prosecution has also failed to establish the unauthorised possession, purchase, selling and transportation and abetment to buy the contraband opium by the petitioners. Further, in their petitions as well the learned counsel for the petitioners has given an undertaking that the petitioners are ready to co-operate with the investigation and also the trial. Mr. Ch. Dhananjoy, learned Senior counsel for the petitioners also voluntarily agreed and submitted that if this Court directed to pay any amount to any orphanage or any other organization, both the petitioners are ready to pay a sum of Rs. 10,000/- by each petitioner and the same

may be imposed as one of the conditions for granting bail to both the petitioners.

[22] Prima facie, nothing on record to show that there was abetment and criminal conspiracy. The petitioners are shown to be involved in the commission of the offence under Section 18(b) and 28 of the ND & PS Act. It is not the case of the respondent police that the recovery also allegedly made from the petitioner Sei Minthang Touthang. Further, the alleged quantity so recovered from the petitioner Kimlhing Haokip is to be proved and determined only after the full fledged trial.

[23] The jurisdiction of the Court to grant bail is circumscribed by the provisions of Section 37 of the NDPS Act. It can be granted in case 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. Thus, the scheme of Section 37 reveals that the exercise of power to grant bail is not only subject to the limitations contained under Section 439 of Cr.P.C., but is also subject to the limitation placed by Section 37 of NDPS Act which commences with non-obstante clause. The operative part of Section 37 is the negative form prescribing the enlargement of bail to any person accused of commission of an offence under the Act, unless twin conditions are satisfied. The first

condition is that the prosecution must be given an opportunity to oppose the application, and the second is that the Court must be satisfied that there are reasonable grounds for believing that he is not guilty of such offence. If either of these two conditions is not satisfied, the ban for granting bail operates.

[24] In the instant case, the prosecution has been given an opportunity to defend/oppose the bail applications and the objections so raised by the prosecution, as stated supra, at present is not convincing as the same would require a concrete oral and documentary evidences. Secondly, prima facie, this Court is of the view that there are reasonable grounds for believing that the petitioners are not guilty of such offence.

[25] As stated supra, the petitioners are now in custody for almost five months. It is not the plea of the respondent police that the petitioners, in past, were involved in any activity of similar nature necessitating bail applications to be considered in that backdrop. Therefore, the finding of the Special Court in rejecting the bail applications on the ground that releasing the petitioners on bail at the present stage of investigation would spoil the society at large and the youth in particular is unsustainable. The stage of which reference is made in the order of the Special Court is not of investigation necessitating further custody of the petitioners either for custodial interrogation or otherwise. The petitioners,

presumably, are innocent persons are entitled to prepare their defence and hence the ends of justice is required to be admitted to bail.

[26] Though the alleged quantity is huge, the possession of the alleged article opium and its recovery are to be proved by way of oral and documentary evidence. It is stated that best part of investigation is almost over. Hence, this Court is of the prima facie view that the petitioners have been able to make out a case for grant of bail on two grounds viz., they were in custody from 25.03.2020 and another ground that no bad antecedent against the petitioners was shown by the prosecution and the petitioner in Bail Application No. 8 of 2020 that she is in advanced stage of 7(seven) months pregnancy. Therefore, considering the facts and circumstances of the case, this Court came to the conclusion that the petitioners are entitled to enlarge on bail, subject to certain conditions.

[27] In the result,

(i) Both the bail applications are allowed.

(ii) The petitioners are directed to be released on bail on executing a bond for a sum of 1,00,000/-(one lakh) each with two sureties each for a like sum to the satisfaction of the Special Judge, NDPS, Bishnupur.

(iii) The petitioner in Bail Application No.9 of 2020 is directed to report before the respondent police daily at 10.00 AM until further orders.

(iv) Considering the health condition of the petitioner in Bail Application No.8 of 2020, this Court is imposing condition at present directing her to appear before the respondent Police or Investigating Officer, once in a week, i.e., on every Monday at 10:00 a.m. until further orders.

(v) The petitioners shall not leave the territorial limits of the trial Court without prior permission.

(vi) The petitioners shall not tamper or intimidate the prosecution witnesses and they are directed to co-operate with the investigating officer and the trial Court.

(vii) It is made clear that the views expressed by this Court are only prima facie views and the petitioners cannot take advantage of the same while facing the trial before the Court concerned and/or before the authorities concerned, in any manner.

(viii) Both the petitioners are directed to pay by way of deposit, a sum of Rs. 10,000/-each to the two children homes by namely (1) **Children Home for Boys** Regd. No.9/75/JJ of 2015 with Dept. of Social Welfare Regd. No.1562/SR/1975under Societies Registration Act, at Alungtang, Ukhrul, Manipur in **A/C No. CT656** (Current Account), UBI, Viewland, Ukhrul Branch,
(2) **Children Home for Girls** Regd. No.1/UKL/JJA of 2018 of Social Welfare Dept. Regd. No.32 (40)

SR/2005 under Societies Act, 1989, at Tallui Junction, Ukhrul, Manipur in account No. 30020110111338, UCO Bank of SSA CORPUS EDEN RESOURCE HOME within one week from today and produce the deposit receipt before the Registrar General of this Court.

(ix) The respondent police are at liberty to move this Court for cancellation of bail, if the petitioners violate any of the conditions imposed on them.

JUDGE

FR/NFR

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