Serial No. 03
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

BA No. 1 of 2020

Date of Order: 24.02.2020

Shri Surendra Banai **Vs.** State of Meghalaya

Coram:

Hon'ble Mr. Justice H. S. Thangkhiew, Judge

Appearance:

For the Petitioner(s) : Mr. A.S. Siddiqui, Adv.

For the Respondent(s) : Mr. B. Bhattacharjee, AAG

---

i) Whether approved for reporting in Law journals etc. Yes/No

ii) Whether approved for publication in press: Yes/No

ORAL

1. The petitioner herein was arrested for offences under Sections 22 (a) (b)/29 of the NDPS Act on 21.08.2019 in connection with the seizure of 384.19 grams of amphetamine tablets. The petitioner on expiry of the statutory period of 60 days made a prayer for grant of default bail and the same was rejected. On the grant of default bail to the co-accused namely one Rebecca Misao on 06.11.2019, the petitioner filed a second bail application for grant of default bail but the same was also rejected by the Special Judge (NDPS) Shillong vide order dated 27.11.2019. Hence, the instant application before this Court.

2. Heard Mr. A.S. Siddiqui, learned counsel for the petitioner and Mr. B. Bhattacharjee, learned AAG for the respondent.

3. Mr. A.S. Siddiqui, learned counsel submits that the petitioner was arrested on 21.08.2019 and produced before the Court on 22.08.2019, and when the prescribed period for filing the charge sheet expired on

21.10.2019 had moved for grant of default bail but the same was rejected. He submits that the petitioner on coming to learn that the Special Judge, (NDPS) Shillong had granted bail on 6.11.2019 to Smti Rebecca Misao, a co-accused from whom the alleged contraband was allegedly seized, then moved another bail application on 13.11.2019 before the Special Judge for grant of default bail which was also rejected on 27.11.2019 on the ground that the petitioner had been charge sheeted for possession of commercial quantity of contraband.

4. Learned counsel submits that the Special Judge, NDPS Shillong failed to appreciate that the date of filing the default bail application is the deciding factor for consideration of grant of bail and if the same is filed before filing the charge sheet, the petitioner is entitled to an indefeasible right to bail. He further submits that the grant of bail to the co-accused and refusing bail to the petitioner on default ground is discriminatory. He lastly submits that the petitioner is innocent and no contraband was ever recovered from his possession and that he had been wrongly implicated in the case for which he has unnecessarily suffered nearly 6 months in custody. Learned counsel prays that the petitioner be allowed to be enlarged on bail on any conditions as may be given by the Court.

5. Mr. B. Bhattacharjee, learned AAG in reply to the submissions of the counsel for the petitioner stoutly resists the arguments as put forward, and asserts that there is no infirmity in the order of the Special Judge dated 27.11.2019, inasmuch as, prima facie material exists and moreover the contraband seized was of commercial quantity. Learned AAG submits that bail has to be considered in terms of Section 37(b) of the NDPS Act, 1985 which has laid down that for offences involving commercial quantity a person shall not be released on bail unless the court is satisfied that there are reasonable grounds to believe that a person is not guilty of such offence, and not likely to commit any offence while on bail. He submits that these conditions not being present in the present case, no case is made out for grant of bail.

सत्यमेव जयते
HIGH COURT OF MEGHALAYA

6. I have heard learned counsel for the parties.

7. Section 37 (b) of the NDPS Act, 1985 (a) (b) (i) & (ii) reads as under:-

> ***"(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 of section 27-A 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 he is not likely to commit any offence while on bail."***

8. The provision as quoted above clearly specifies on what conditions bail can be considered in such cases. The undisputable fact is that a seizure of 384.19 grams of amphetamine tablets were seized which is of commercial quantity, which invalidates consideration of default bail except if the court is satisfied as to the two other conditions i.e. reason to believe that the accused is not guilty of such offence and that he is not likely to commit any offence while on bail. Unless these conditions are satisfied, the ban for granting as imposed by Section 37 cannot be sidestepped. In this context, in the judgment in the case of ***State of Kerala vs. Rajesh*** reported in ***2020 SCC Online SC 81***, the Hon'ble Supreme Court has held in Para 20 & 21 as follows :-

> ***"20. 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 the CrPC, but is also subject to the limitation placed by Section 37 which commences with non-obstante clause. The operative part of the said section is in 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.***
>
> ***21. The expression "reasonable grounds" means something more than prima facie grounds. It contemplates***

substantial probable causes for believing that the accused is not guilty of the alleged offence. The reasonable belief contemplated in the provision requires existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence. In the case on hand, the High Court seems to have completely overlooked the underlying object of Section 37 that in addition to the limitations provided under the CrPC, or any other law for the time being in force, regulating the grant of bail, its liberal approach in the matter of bail under the NDPS Act is indeed uncalled for."

9. In the instant case, no material is forthcoming to satisfy the conditions as laid down by Section 37 of the NDPS Act. In view of the same the bail application is rejected and is accordingly dismissed.

JUDGE

Meghalaya
24.02.2020
"V. Lyndem PS"