

# IN THE HIGH COURT OF MEGHALAYA

**BA No. 24 of 2014**

Smti. Tapashi Deb  
W/o Shri. Sukesh Deb,  
Resident of Durga Chowmuhan Ram Thakur Lane,  
Police Station : West Agartala,  
P.O. Rannagar,  
District, West Tripura, Tripura.

**.....Petitioner**

**- Vrs -**

The State of Meghalaya

**..... Respondent**

**BEFORE  
THE HON'BLE MR JUSTICE SR SEN**

Advocate for the Petitioner	:	Mr BR Dey Mr. BK Deb Roy
Advocate for the Respondent	:	Mr. R Gurung
Date of Hearing	:	26.06.2014
Date of Judgment and Order	:	26.06.2014

## **JUDGMENT AND ORDER (Oral)**

Mr. BR Dey, the learned senior counsel assisted by Mr BK Deb Roy, the learned counsel for the petitioner submits that, **Shri Sukesh Deb** is in no way connected in this instant case. After detention/detaining of vehicle No. TR 01 AL 0655 (Tata Sumo), he came to inquire into the matter to know the reason why the said vehicle was detained by the police at Byrnihat.

2. The learned senior counsel further argued that the owner of the vehicle and his son have got every right to know the movement of or any detention, and there is nothing wrong, if he inquire from the police and for that reason the police cannot arrest him. Moreover, he is 63 years old and ailing person, so bail may be granted with any condition.

3. Mr. R Gurung, the learned State counsel argued that on thorough checking and search of the vehicle, 1100 bottles of Phensedyl (Cough Syrup) were recovered being a banned drugs which contained codeine as found mentioned in the table prepared under Section- 2 (viia), (xx), (xxiia) of the NDPS Act, 1985.

4. The learned State counsel further submitted that, if multiply the percentage of codeine in 1100 bottles comes to 2.013 Kg which is definitely a commercial quantity and further argued that bail application may be rejected.

5. It is a settled principle of law that, bail under NDPS Act is guided by Section 37 of NDPS Act, 1985 which is reproduced herein below;

***“37. Offences to be cognizable and non-bailable – (1) notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) –***

***(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 or section-27A 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.***

***(2) The limitations on granting of bail specified in clause (b) of sub-section (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force, on granting of bail.”***

6. On bare perusal Section 37 of the NDPS Act referred to above, it is apparent and understood that, before granting bail Court will have to satisfy 3(three) ingredients; Firstly, Court must give an opportunity to the prosecution to oppose the bail. Secondly, even if prosecution opposes the bail Court must

satisfy itself that accused is not guilty of offence and thirdly, if the accused is released on bail he will not go back of the same trade of menace.

7. In the case of ***Union of India vrs Ramsamujh and Another (Cr. Appeal No. 866 of 1999)***, the Hon'ble Apex Court has interpreted Section-37 of the NDPS Act as observed above. The important portion of Judgment is reproduced herein below:

***“5. The jurisdiction of the Court to grant bail is circumscribed by the provision of Section-37 of the NDPS Act. It can be granted in case, where there are reasonable grounds for believing that accused is not guilty of such offence and hat he is not likely to commit any offence while on bail. It is the mandate of the Legislature which is required to be followed.***

***6. It is to be borne in mind that the aforesaid legislative mandate is required to be adhered and followed. It should be borne in mind that in murder case, accused commits murder of one or two persons, while those persons who are dealing in narcotic drugs are instruments in causing death or in inflicting death blow to number of innocent young victims, who are vulnerable; it causes deleterious effects and deadly impact on the society; they are a hazard to the society; even if, they are released temporarily, in all probability, they would continue their nefarious activities of trafficking and/or dealing in intoxicants clandestinely. Reasons may be large stake and illegal profit involved. This Court, dealing with the contention with regard to punishment under NDPS Act, has succinctly observed about the adverse effect of such activities in Durand Didier v. Chief Secretary, Union Territory of Goa, 1990 (1) SCC 95, as under –***

***“With deep concern, we may point out that the organized activities of the underworld and the clandestine smuggling of narcotic drugs and psychotropic substances into this country and illegal trafficking in such drugs and substances have led to drug addiction among a sizable section of the public, particularly the adolescents and students of both sexes and the menace has assumed serious and alarming proportion in the recent years. Therefore, in order to effectively control and***

***eradicate this proliferating and booming devastating menace, causing deleterious effects and deadly impact on the society as a whole, the Parliament in the wisdom has made effective provisions by introducing this Act 81 of 1985 specifying mandatory minimum imprisonment and fine.”***

***7. to check the menace of dangerous drugs flooding the market the Parliament has provided that the person accused of offences under the NDPS Act should not be released on bail during trial unless mandatory conditions provided in Section 37, namely,***

***(i) there are reasonable grounds for believing that accused is not guilty of such offence; and***

***(ii) that, he is not likely to commit while on bail, are satisfied.”***

8. I have perused the CD.

9. On perusal of the CD and after going through the statement as recorded by the IO, I could not satisfy myself that the accused Shri. Sukesh Deb has no link with the case or he is not guilty of the offence at this stage. Besides that, I also could not satisfy if he is released on bail, he will not go back to the same trade.

10. It is also a settled principle of law that, refusal of bail under NDPS Act is rule, granting is exception. Our legislature made this strong legislation, keeping in mind the offence under NDPS Act which is social menace and destroys the society. In a murder case, a murderer kills one or two persons but the offender under NDPS Act gives a death blow to general masses and in many occasions, it is found that once they obtained bail, they go back to the same trade, may be due to the high profit of trade.

11. For the reasons as discussed above at this juncture, I am not inclined to grant the bail, hence, bail application is hereby rejected. However, the district jail authority where the accused is presently accommodated is

directed to provide the best medical facilities for treatment and well being of the accused as and when necessary.

12. With these observations and directions, this instant bail application is dismissed and the matter stands disposed of.

**JUDGE**

V Lyndem