

**HIGH COURT OF TRIPURA  
AGARTALA**

**B.A. No. 90 of 2021**

**Shri Sio Mog**

Son of Late Tuisa Mog, Resident of Betcherra, Chellagang, P.S-Nutan Bazar, District-Gomati Tripura

-----Accused Petitioner(s)

*Versus*

**The State of Tripura**

(Represented by the Public Prosecutor), High Court of Tripura, Agartala.

-----Respondent(s)

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For Petitioner(s)	:	Mr. J. Bhattacharjee, Adv. Mr. S. Ghosh, Adv.
For Respondent(s)	:	Mr. R. Datta, P.P. Mr. S. Ghosh, Addl. P.P.
Date of Hearing	:	<b>17<sup>th</sup> December, 2021.</b>
Date of Pronouncement	:	<b>22<sup>nd</sup> December, 2021.</b>
Whether fit for reporting	:	NO

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**B \_ E \_ F \_ O \_ R \_ E \_**

**HON'BLE MR. JUSTICE S.G. CHATTOPADHYAY**

**JUDGMENT & ORDER**

Present petitioner is an accused in Mungiakami PS case No.2021/MGK/031 which has been registered for commission of offence punishable under sections 20(b)(ii)(C) and 29 NDPS Act, 1985. During investigation of the case, petitioner was arrested on 01.10.2021. He was released on interim bail by the Special Judge (NDPS), Khowai on 18.10.2021 for a period till 30.10.2021 on the special ground of illness of his wife. The period of interim bail was extended and by order dated

03.12.2021, petitioner was taken back into custody after rejecting his application seeking further extension of the term of his interim bail.

**[2]** Aggrieved petitioner has approached this court for his release on bail by means of filing this bail application under section 439 Cr.P.C.

**[3]** The background facts of the case, briefly stated, are as under:

Ranjit Das, Sub Inspector of Police of Mungiakami police station lodged a written FIR with the Officer in Charge of his own police station alleging, inter alia, that he along with his accompanying police staff detained a 12 wheeler truck bearing registration No.AS 01 DC 4599 at 44 miles within the jurisdiction of Mungiakami police station on national highway-08 pursuant to a telephonic information received from their own source. When the informant and his staff arrived at the spot, the vehicle was found parked on the roadside where two other vehicles bearing registration No. TR 03M 0529 and TR 03M 0235 were also found parked at a little distance from the offending vehicle. The people who assembled there told the informant that when they were decorating the puja pandal for organizing durga puja, the offending vehicle appeared there from the side of Ambassa in a very rash and negligent manner and it was about to hit a shop at the Mungiakami market. Some local youths chased the vehicle on their motor bikes. They managed to stop the vehicle due to the obstacle created at the work site of national highway extension work. Two other medium vehicles accompanying the truck were also detained by them. When police arrived, the truck driver

and his associate came out of their vehicle. Six people also came out of the medium vehicles and all of them started altercations with the local youths who detained their vehicles. Police carried out search operation in the truck. 85 packets of dried ganja were recovered by police from inside the truck which weighed 924 Kgs. All the three vehicles were seized by police along with the contraband and the driver and co-driver of the offending truck were arrested and brought to the police station.

**[4]** Based on the said FIR, the case was registered and investigation was taken up. As discussed, the present accused namely, Sio Mog was arrested in the course of investigation.

**[5]** Heard Mr. J. Bhattacharjee, learned counsel appearing along with Mr. S. Ghosh, learned counsel for the petitioner. Also heard Mr. R. Datta, learned P.P appearing along with Mr. S. Ghosh, learned Addl. P.P for the State respondent.

**[6]** Counsel appearing for the accused submits that there is no iota of evidence against Sio Mog in support of the charges brought against him. Counsel submits that the Special Judge granted bail to him on 18.10.2021. Even though there was no allegation of misuse of liberty against the accused, learned Special Judge by his order dated 03.12.2021 cancelled his bail application without assigning any reason. According to Mr. Bhattacharjee, learned counsel, the trial Judge granted bail to the accused on the ground of illness of his wife and before her recovery from such illness his bail was cancelled. Counsel submits that

bail is entirely within the discretion of the court and the trial Judge should have exercised such discretion in a humane manner and compassionately. In support of his contention Mr. J. Bhattacharjee, learned counsel has relied on the decision of the Apex Court in **Parvez Noordin Lokhandwalla Vs. State of Maharashtra & Anr.** reported in **(2020) 10 SCC 77** wherein the Apex Court in paragraph 16 of the judgment has held as under:

*"16. In Dataram Singh v State of Uttar Pradesh (2018)16 SCC 74, this Court observed that:*

*"6. ....The grant or refusal of bail is entirely within the discretion of the judge hearing the matter and though that discretion is unfettered, it must be exercised judiciously and in a humane manner and compassionately. Also, conditions for the grant of bail ought not to be so strict as to be incapable of compliance, thereby making the grant of bail illusory."*

**[7]** Counsel has also relied on the decision of the Apex Court in **Myakala Dharmarajam & Ors. Vs. State of Telangana & Anr.** reported in **(2020) 2 SCC 743** and contends that bail granted to an accused cannot be cancelled unless prosecution accuses that during the period of bail he interfered with the course of investigation or otherwise misused his liberty. Counsel has relied on paragraph 8 of the judgment which is as under:

*"8. In Raghubir Singh v. State of Bihar (1986) 4 SCC 481 this Court held that bail can be cancelled where (i) the accused misuses his liberty by indulging in similar criminal activity, (ii) interferes with the course of investigation, (iii) attempts to tamper with evidence or witnesses, (iv) threatens witnesses or indulges in similar activities which would hamper smooth*

*investigation, (v) there is likelihood of his fleeing to another country, (vi) attempts to make himself scarce by going underground or becoming unavailable to the investigating agency, (vii) attempts to place himself beyond the reach of his surety, etc. The above grounds are illustrative and not exhaustive. It must also be remembered that rejection of bail stands on one footing but cancellation of bail is a harsh order because it interferes with the liberty of the individual and hence it must not be lightly resorted to."*

[8] Counsel further contends that without very cogent and overwhelming circumstances justifying cancellation of bail, bail once granted cannot be cancelled. Counsel has relied on the decision of the Apex Court in **Dolat Ram & Ors. Vs. State of Haryana** reported in **(1995) 1 SCC 349** wherein the Apex Court in paragraph 4 of the judgment has held as under:

*"4..... Very cogent and overwhelming circumstances are necessary for an order directing the cancellation of the bail, already granted. Generally speaking, the grounds for cancellation of bail, broadly (illustrative and not exhaustive) are: interference or attempt to interfere with the due course of administration of Justice or evasion or attempt to evade the due course of justice or abuse of the concession granted to the accused in any manner. The satisfaction of the court, on the basis of material placed on the record of the possibility of the accused absconding is yet another reason justifying the cancellation of bail. However, bail once granted should not be cancelled in a mechanical manner without considering whether any supervening circumstances have rendered it no longer conducive to a fair trial to allow the accused to retain his freedom by enjoying the concession of bail during the trial....."*

[9] Having relied on the aforesaid decisions, Mr. Bhattacharjee, learned counsel urges the court for granting bail to the accused.

[10] Mr. R. Datta, learned P.P on the other hand vehemently opposes the bail application. It is contended by Mr. Datta, learned P.P that it would appear from the order dated 18.10.2021 of the learned Special Judge in MGK PS case No.31 of 2021 that the learned Special Judge granted bail to the accused only for an interim period on compassionate ground for visiting his ailing wife which was also extended for a further period till 03.12.2021. By an order passed on 03.12.2021, the learned Special Judge had taken the accused back into custody since he could not come out with justification for the extension of the period of his interim bail. Learned P.P submits that such an order passed by the learned Special Judge does not amount to cancellation of bail. By such order, the learned Special Judge denied to grant bail to the accused for want of justifiable ground. Learned P.P submits that petitioner is involved in a serious offence under the NDPS Act involving commercial quantity of contraband. Producing the case diary, learned P.P submits that the statements of the witnesses recorded under section 161 Cr.P.C will demonstrate that accused is an active collaborator of the drug peddlers who were transporting commercial quantity of dried ganja in the offending vehicle. According to Mr. Datta, learned P.P, release of the accused at this stage will impede the course of investigation. Referring to a decision of High Court of Delhi in **Islamuddin @ Chottey Vs. State of Delhi** reported in **1999 (51) DRJ** learned P.P submits that in a case under NDPS Act involving commercial quantity of contraband, the restrictions under section 37 of



the Act with regard to grant of bail will apply and in such cases bail should not be granted to the accused. Counsel has relied on paragraph 5 of the judgment which reads as under:

*"5. A plain reading of Section 37 of the NDPS Act show that the provisions contained therein are applicable and operative "notwithstanding anything contained in the Code of Criminal Procedure 1973". It also shows that the limitations on granting of bail specified in clause (b) of sub-section (1) of Section 37 are in addition to the limitations under the Code of Criminal Procedure 1973 or any other law for the time being in force on granting of bail. Therefore, whatever be the scope and extent of the power of the Court under Section 439 of the Code of Criminal Procedure, while considering an application for bail-whether it is regular bail or interim bail-in the case of a person accused of an offence punishable for a term of imprisonment of five years or more under the NDPS Act, the power of the Court remains restricted by the limitations specified in clause (b) of sub-s. (1) of sec. 37 of the NDPS Act. Hence in such a case the Public Prosecutor should be given an opportunity to oppose the application and if the Public Prosecutor opposes the application the Court cannot grant bail unless 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. Bail cannot be granted on any other ground in view of the limitations on granting bail specified in clause (b) of sub-sec. (1) of Section 37. The Court has no power to grant bail on the ground of illness or hospitalization of the spouse or on any similar ground. Admittedly the petitioner is facing trial for offences under Sections 21/61/85 of the NDPS Act which are punishable for a term of imprisonment of five years or more. Hence the petitioner's application for grant of bail is governed by the limitations specified in clause (b) of sub-section (1) of sec 37 of the NDPS Act. As already observed this Court has already rejected the petitioner's application for regular bail holding that this Court is not satisfied that there are reasonable grounds for believing that he is not guilty of the alleged offences and that he is not likely to commit any offence while on bail. In these circumstances the petitioner is not entitled to the grant of interim bail."*

**[11]** Considered the submissions made by the counsel appearing for the parties. Perused the entire record including the updated case diary.

**[12]** The usual parameters for consideration of bail are the gravity of the crime, character of the evidence, the likelihood of accused fleeing from justice, repeating the offence, possibility of tampering with the evidence and obstructing the course of justice etc. The Public Prosecutor has contended that if released on bail, the accused will repeat the same kind of offence. Learned P.P. has also contended that punishment prescribed for the offence is serious and therefore there is likelihood of tampering with the evidence and obstructing the course of justice.

**[13]** The learned Special Judge granted interim bail to the accused for a particular period for a special purpose. Therefore, refusal of the court to extend the term of interim bail cannot be treated as cancellation of bail in terms of sub section (2) of section 439 Cr.P.C. After the term of interim bail expired and accused surrendered before the Special Judge, court heard his bail application on merit and after rejection of the same remanded him to custody. Therefore, the contention of learned defence counsel that the learned Special Judge cancelled the bail application of the accused without considering the settled parameters do not gain ground.

**[14]** A detailed exposition of the materials available on record against the accused would not be appropriate at this stage. Suffice it to say that there are sufficient prima facie materials against the accused which constitute an offence punishable under section 20(b)(ii)(C) NDPS Act against the accused. The quantity of contraband seized in this case

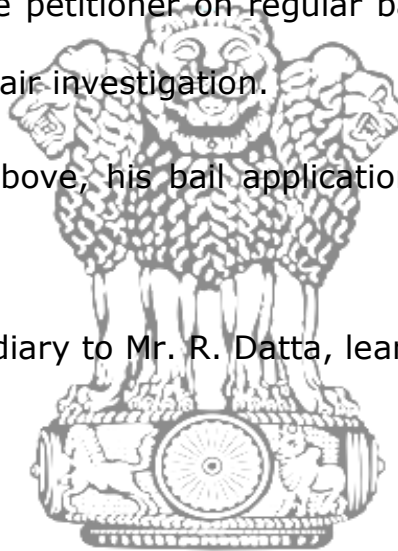


is undisputedly commercial quantity and therefore the restrictions of section 37 NDPS Act with regard to grant of bail will apply to this case.

**[15]** From the facts and circumstances presented before this court, I am of the considered view that the materials available on record prima facie support the charge brought against the accused. The alleged offence cannot be lightly viewed with because it has a disastrous impact on society. Therefore, a free and fair investigation of the case is necessary. Release of the petitioner on regular bail is likely to obstruct the course of a free and fair investigation.

**[16]** In view of the above, his bail application stands rejected and the case is disposed of.

Return the case diary to Mr. R. Datta, learned P.P.



**JUDGE**

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