

Serial No. 03
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

BA. No. 22 of 2023

Date of Decision: 31.07.2023

Shri. Khupliansum Vs. State of Meghalaya

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioner/Appellant(s) : Mr. M.F. Qureshi, Adv.
For the Respondent(s) : Mr. N.D. Chullai, AAG. with
Ms. R. Colney, GA.

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| i) | Whether approved for reporting in Law journals etc.: | Yes/No |
| ii) | Whether approved for publication in press: | Yes/No |

JUDGMENT (ORAL)

1. This is an application under Section 439 Cr.P.C with a prayer for grant of bail on behalf of the accused person Smti. Kimneikhol Khongsai who was arrested with Khliehriat P.S. Case No. 64 of 2022 under Section 21(c)/22(a)/29 NDPS Act and also in another case being Khliehriat P.S. Case No. 65 of 2022 under Section 21(c)/29 NDPS.

2. Heard Mr. M.F. Qureshi, learned counsel for the petitioner who has submitted that the accused person abovenamed, on 27.10.2022, while

on her way to Shillong from Manipur to appear before the Special Judge (NDPS) in CrI.(NDPS) Case No. 9 of 2020, in the early hours of the same day, she was arrested and taken into custody.

3. It is the submission of the learned counsel that the accused person was shown arrest in the aforementioned criminal cases, allegedly on being implicated by the co-accused, who were arrested in connection with the said criminal cases.

4. The Investigating Officer has filed the charge sheet in both cases, that is, No. 64 and 65 of 2022 respectively with a finding that a case under Section 29 NDPS Act was found well established against the accused person in question in both cases.

5. The learned counsel has submitted that no contraband or narcotic drugs and psychotropic substances was found from the possession of the accused person and as such, the presumption under Section 54 of the NDPS Act cannot be attached to the accused person. What has been alleged against the accused person is that she was the main supplier of the narcotic drugs to the co-accused, which allegation was based on the so-called communication between the accused person and the said co-accused person. However, from the so-called detail records (CDR), the alleged mobile handset used by the accused person does not belong to her and the sim card is also not registered in her name. Therefore, the accused person

is innocent and cannot be connected to the alleged offence.

6. The learned counsel has also submitted that the accused person has been in custody for more than 9(nine) months and trial has not yet begun, therefore, for prolongation of the trial, the accused person is entitled to be enlarged on bail.

7. In support of his contention in this regard, the learned counsel has referred to the case of *Rabi Prakash v. The State of Odisha*; order dated 13.07.2023 passed by the Hon'ble Supreme Court in Special Leave to Appeal (Crl.) No. 4169/2023, wherein at para 4 of the same, the Hon'ble Supreme Court has observed “... *The prolonged incarceration, generally militates against the most precious fundamental right guaranteed under Article 21 of the Constitution and in such situation, the conditional liberty must override the statutory embargo created under Section 37(1)(b)(ii) of the NDPS Act.*”

8. The case of *Satender Kumar Antil v. Central Bureau of Investigation & Anr:* (2022) 10 SCC 51, para 86 was also referred to by the learned counsel for the petitioner to say that the Hon'ble Supreme Court in this case has held that:

“86. Now we shall come to Category C. We do not wish to deal with individual enactments as each special Act has got an objective behind it, followed by the rigour imposed. The general principle governing delay would apply to these categories also. To make it clear, the provision contained in Section 436-A of the Code would apply to the Special Acts

also in the absence of any specific provision. For example, the rigour as provided under Section 37 of the NDPS Act would not come in the way in such a case as we are dealing with the liberty of a person. We do feel that more the rigour, the quicker the adjudication ought to be. After all, in these types of cases number of witnesses would be very less and there may not be any justification for prolonging the trial. Perhaps there is a need to comply with the directions of this Court to expedite the process and also a stricter compliance of Section 309 of the Code.”

9. Considering the fact that there is no evidence linking the accused person to the alleged offence, more so under Section 29 of the NDPS Act, where no abetment and criminal conspiracy can be attributed to the action of the accused person, therefore, this is a fit case for grant of bail to the accused person on any conditions that this Court may deem fit and proper to impose.

10. Mr. N.D. Chullai, learned AAG appearing for the State respondent, has opposed the prayer made in this application and has submitted that a look into the antecedent of the accused person in question, would reveal that she was involved in a number of cases under the NDPS Act, implicating her with possession and supply of narcotic drugs. It is also well-founded that the accused person is a supplier of narcotic drugs, which fact was revealed from the statement of the co-accused persons, who has named the accused person herein.

11. In this connection, the case of Indresh Kumar v. The State of Uttar Pradesh & Anr was cited by the learned AAG, wherein vide order

dated 12.07.2022 in Criminal Appeal No. 938 of 2022, the Hon'ble Supreme Court in a case for cancellation of bail, has observed that “... *Statements under Section 161 of Cr.P.C may not be admissible in evidence, but are relevant in considering the prima facie case against an accused in an application for grant of bail in case of grave offence*”.

12. On the contention of the learned counsel for the petitioner that the alleged contraband was not found in the possession of the accused person, the learned AAG has cited the case of *Union of India Through Narcotic Control Bureau, Lucknow v. Md. Nawaz Khan: (2021) 10 SCC 100* at para 28 & 29 of the same, and has submitted that absence of possession of contraband on the accused person, would not dilute the level of scrutiny required under Section 37(1)(b)(ii) of the NDPS Act.

13. Again, on the issue of the call details report (CDR) in the context of this case, the learned AAG has cited para 34, 34.1, 34.2 & 34.3 of the Md. Nawaz Khan's case, which reads as follows:

“34. The following circumstances are crucial to assessing whether the High Court has correctly evaluated the application for bail, having regard to the provisions of Section 37:

34.1. The respondent was travelling in the vehicle all the way from Dimapur in Nagaland to Rampur in Uttar Pradesh with the co-accused.

34.2. The complaint notes that the CDR analysis of the mobile number used by the respondent indicates that the respondent was in regular touch with the other accused persons who were known to him.

34.3. The quantity of contraband found in the vehicle is of a commercial quantity.”

14. This Court, has given due consideration to the submission made by the parties and has observed that the offence alleged against the accused person is one under Section 29 of the NDPS Act, which speaks of punishment for abetment and criminal conspiracy as regard offence punishable under Chapter IV of the NDPS Act, Section 21(c) being included therein, meaning that, if an offence under Section 21(c) has been committed, abetment of the same, would carry the same punishment and also that the rigors of Section 37 of the said NDPS Act shall also apply.

15. Section 37 starts with a non obstante clause to indicate that grant of bail which is the norm is deemed to be affected in the negative, that is to say that bail is generally refused under this provision 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.

16. From an analysis of the submission made by the parties, the learned counsel for the petitioner has not been able to convince this Court that there are reasons to believe that the accused person is not guilty of the offence alleged, while the impetus is laid only on the issue of delay or prolongation of trial, which according to the learned counsel is an

entitlement for grant of bail conferred upon the accused person.

17. A reading of the materials on record, particularly the annexures to this application and also on perusal of the order dated 26.07.2023 passed by the learned Special Judge (NDPS) Khliehriat, which order was produced before this Court by the parties, the same would show that the CFSL report from Assam is awaited and therefore, the prayer of the parties for argument before charge was not taken up. The next date fixed for the case is for production and submission of CFSL. This would only indicate that the proceedings before the Trial Court is moving in a normal course and there is no unnatural or intentional delay by the court. The contention of the petitioner that the trial has been unnecessarily prolonged, cannot be accepted by this Court.

18. In the case of Indresh Kumar (supra), the Hon'ble Supreme Court has cited the case of *Dataram Singh v. State of U.P & Ors: (2018) 3 SCC 22*, more particularly para 2 of the same which reads as follows:

“2. There is no doubt that the grant or denial of bail is entirely the discretion of the judge considering a case but even so, the exercise of judicial discretion has been circumscribed by a large number of decisions rendered by this Court and by every High Court in the country. Yet, occasionally there is a necessity to introspect whether denying bail to an accused person is the right thing to do on the facts and in the circumstances of a case.”

19. Taking a cue from this, this Court is reminded of a remark which runs as follows:

“The scourge of drugs yields disastrous consequences on the health of young people, the well-being of the family, the spread of crime and the destruction of economies by financial flows of obscure origins”

20. The above remark is aptly true in the society that we are now living where the menace of drugs is threatening to destroy lives and society. Indeed, young people are most vulnerable to this threat and many a time, have been seen to fall prey to the same. It is incumbent upon the society as well as courts to combat this menace in whatever possible way and although, due procedure of law has to be followed, in drug related cases, the Investigating Agencies and Courts has to be given wide latitude in napping or bringing any possible accused to book.

21. Following the observation made in *Dataram Singh's case*, this Court, after due introspection and on considering all aspects of the matter, has deemed it fit and proper to deny the prayer made by the petitioner at this point of time.

22. Consequently, this application is dismissed as devoid of merit and the same is accordingly disposed of. No costs.

Judge

Meghalaya
31.07.2023
“D. Nary, PS”