

**IN THE HIGH COURT OF MANIPUR
AT IMPHAL**

BAIL APPLICATION NO. 2 OF 2024

Shri Lunkhongam Haokip, aged about 40 years S/o Janglet Haokip, resident of Langkhong near Ikou village, P.O. & P.S. Saikul, Kangpokpi District, Manipur – 795145.

.... *Petitioner*

- Versus -

1. The State of Manipur represented by Commissioner (Home).
2. The Officer-in-Charge, Narcotic & Affairs of Border PS Manipur, Imphal.

.... *Respondents*

**B E F O R E
HON'BLE MRS. JUSTICE GOLMEI GAIPHULSHILLU**

For the petitioner : Mr. Tungrei Ngakang, Advocate

For the respondents: Mr. Samarjit Hawaibam, Public Prosecutor

Date of hearing : 16.02.2024

Date of order : **29.02.2024**

**O R D E R
(CAV)**

[1] Heard Mr. Tungrei Ngakang, learned counsel appearing for the petitioner and Mr. Samarjit Hawaibam, learned PP appearing for the respondents.

[2] The petitioner was arrested on 15.10.222 by the personnel of NAB PS, Manipur, Imphal from Pukhao Terapur near Dolaithabi Dam, Imphal East District, Manipur at about 02:00 pm from his possession of 2.040 Kg (approx.) of brown sugar and on the same day an FIR being FIR No. 37 (10)

2022 NAB-PS U/S 21 (c) ND & PS Act was registered. Charge sheet was filed against the petitioner and the petitioner is facing trial before the Ld. Special Court ND & PS, Manipur with reference to the FIR aforementioned.

[3] The petitioner filed a bail application being Cril. Misc. (B) Case No. 273 of 2023 on medical ground before the Ld. Special Court ND & PS, Manipur. In this connection, the medical officer of the Manipur Central Jail, Sajiwa submitted medical report, wherein it has been found that the petitioner has the history of treatment of piles, tuberculosis and chronic tonsillitis. He complained of back pain and abdominal pain with disturbed bowel ad weakness of lower limbs. Further, on 22.11.2023 the medical officer examined the petitioner and the petitioner has tenderness in the lower lumber spine and was given symptomatic treatment for the said medical condition by prescribing some medications. According to the medical officer, the petitioner requires X-Ray examination of his lumber spine, but the said facility is not availale at the M.I. room, Manipur Central Jail Sajiwa. Further, the medical officer stated to the effect that only after getting the X-Ray report, it can be ascertained as to whether the petitioner has life threatening medical condition.

Vide order dated 04.12.2023, the Ld. Special Judge (ND & PS), Manipur informed the SP, Manipur Central Jail, Sajiwa to provide all the necessary and proper medical facilities (including X-Ray examination of the Lumber Spine of the accused and other feasible routine investigations) to the accused at the earliest and submit a report on or before 15.12.2023 and the application was rejected and disposed of.

[4] As per the report submitted on 14.12.2023 after disposal of the case, the medical facilities including X-Ray examination could not be obtained as the petitioner belongs to kuki community and it will be vulnerable to his life if he is taken to JNIMS/RIMS hospital for treatment due to present law & situation in the State. Despite taking medicine as advised by the doctor, since there is no relief in his health condition, immediate X-

Ray examination is required, but the same is not possible while is in judicial custody.

Accordingly, the instant bail application has been filed under Section 439 of the Cod of Criminal Procedure Code, 1973 read with Section 37 of the ND & PS Act for releasing the accused/petitioner on interim bail of 3 (three) months in connection with FIR : FIR No. 37 (10) 2022 NAB-PS U/S 21 (c)/60(3) ND & PS Act so as to get medical treatment outside.

[5] The learned PP filed affidavit-in-opposition stating that the petitioner was found to be Covid-19 positive and was remanded into judicial custody for a period of 15 days. After conducting the inventory and sampling of the seized drugs before the Ld. Duty Magistrate, Imphal East, packed sample was sent to the FSL Pangei for obtaining expert opinion. Statements of the complainant and witnesses were also recorded and they corroborated with the OE of the case.

On 13.01.2023 the expert opinion from FSL Pangei was received vide report No. 415 CH/2022 giving positive result for brown sugar. Message was sent to the concerned police stations for tracking out and cause arrest of the accused persons involved in the case. After complete investigation, charge sheet was submitted to the concerned Court vide CS No. 14/NAB-PS/2023 dated 14.02.2023 for prosecution and trial against the accused person as there has been sufficient evidence for commission of the offences alleged against him.

[6] The learned PP submits that the medical report does not suggest any requirement for treatment of the petitioner in a better health facility or hospital outside the jail. The Special Court (ND & PS), Manipur further examined the doctor namely, Mr. Amarjit Singh, medical officer of MCJ, Sajiwa as CW No. 1 in connection with the report dated 22.11.2023 prepared by him. However, the statement of the CW No. 1 does not suggest any requirement for treatment of the accused/petitioner in a better medical facility outside the jail. The medical officer also did not exactly said that the

accused/petitioner required X-Ray examination on him except suggesting that he may require X-Ray examination. There is no opinion of the medical officer that health condition of the accused/petitioner is a serious one. If he specialized treatment, a specialist can be called from Health Department through the SP, Manipur Central Jail, Sajiwa. Thus, the accused/petitioner can receive his medical treatment in the jail.

[7] Further, it has been submitted by the learned PP that the observation made in the order dated 04.12.2023 is not a direction for submitting the report for consideration of the bail application of the petitioner/accused, but the same was direction to the jail authority to provide health and treatment facility to the accused/petitioner and for submission of a report for the compliance of the said direction. The same never amounts to passing order and disposal of the bail application before the required medical report which had already been considered by the Ld. Special Court and even the medical officer was examined and only thereafter the order dismissing the application of the petitioner/accused was passed by the Ld. Special Court. The said observation of the Ld. Special Court is to ensure that the accused/petitioner avail of the medical facility and treatment inside the jail and nothing else.

Vide letter dated 14.12.2023 of the office of the Superintendent, Manipur Central Jail, Sajiwa, Manipur, the required investigation report of the accused/petitioner could not be submitted in time due to prevailing law & order situation in the State. However, all feasible proper medical facilities and investigation to the accused UTP has been provided inside the jail. The accused/petitioner can also be given X-Ray examination inside the jail or any other Government hospital. It does not clearly show what illness the accused/petitioner is suffering and what test or examination on the body of the accused/petitioner is required.

[8] On the other hand, the accused/petitioner is alleging that he cannot be taken outside the jail and bring at JNIMS in the present law &

order situation. Security arrangement can be made on the requisition of the said Superintendent, Manipur Central Jail, Sajiwa to the concerned authorities for the treatment of the accused/petitioner or taking X-Ray examination at JNIMS or any other safer facility. Accordingly, the petitioner is best to be referred to the State medical board for finding out as to whether he is really suffering from illness or not and whether he can be treated while remaining in judicial custody or not.

[9] The learned PP further submits that the commission of offence under ND & PS Act involving commercial quantity of contraband substances, is a heinous and serious one which has great impact on the society and nation. There has been ample evidence for commission of the offence by the accused/petitioner. The contraband substances of commercial quantity were seized from the possession of the accused/petitioner while he was trafficking the same to sell. It has also held by the Hon'ble Apex Court that bail cannot be granted on mere ground of illness and when there is no serious illness which cannot be treated while in judicial custody.

[10] After hearing both the learned counsels at length and also after perusal of the application with counter affidavit and documents filed by both the learned counsel for the parties and the rulings submitted by both the learned counsels in support of their cases, it is emerged that the accused was arrested on 15.10.2022 and since his arrest, he is languishing in jail till date. The seized articles from the possession of the accused is weighing about 2.042 Kg. and also that charge sheet is filed and also that the accused is not well and as per the report submitted by SP Jail, the accused needs to take X-Ray examination of lumber spine and other routine investigation but this medical facility including X-Ray examination could not be obtained inside the jail as there is no such facility inside the jail and the accused could not be given this facility outside the jail as the petitioner belongs to Kuki community as it will be vulnerable to his life if he is taken to JNIMS/RIMS hospital for treatment due to present law & order situation.

But, on perusal of the report of the medical officer, it does not indicate that the illness of the accused is that of life threatening.

[11] In the facts and circumstance and the gravity of the alleged offences (the quantity of the seized contraband drugs), the present application filed by the petitioner is rejected.

However, liberty is given to the petitioner to file fresh application, if as and when there is new development regarding his health before the concerned Court.

JUDGE

FR/NFR

Bipin