



Serial No. 01
Supplementary List

HIGH COURT OF MEGHALAYA
AT SHILLONG

BA No. 77 of 2024

Date of Decision: 28.11.2024

Shri. Dilu Joy Reang
 Son of Jogen Reang
 Of Ahalyapur, P.O & P.S-
 Kanchanpur, North Tripura
 Presently in District Prison &
 Correctional Home, Nongpoh

.....Petitioner/Accused

-Versus-

The Union of India, Represented
 by Shri. Indranil Chaliha Custom
 Headquarter (Preventive) Unit,
 Shillong

.....Respondent

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioner/Appellant(s) : Mr. S. Pandit, Adv.

For the Respondent(s) : Dr. N. Mozika, DSGI
 Mr. J.I. Nongrum, Adv.

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



ORDER (ORAL)

1. This bail application has been filed under the provision of Section 483 BNSS read with Section 37 of the NDPS Act, 1985 by the petitioner with a prayer for grant of bail in connection with Criminal NDPS Case No. 8 of 2023 pending before the Court of the learned Special Judge (NDPS), Nongpoh, Ri-Bhoi District.

2. The brief facts of the case is that the Customs Officials, on receipt of reliable telephonic information on 23.05.2023 at about 11.00 pm or so, had intercepted a Maruti Alto vehicle bearing Registration No. ML 05 Q 6794, the said group of Customs Officials having followed the occupants of the said vehicle No. ML 05 Q 6794 at about 3:00 am of 24.05.2023, the vehicle was asked to stop but on the said order not being complied with and the vehicle was speeding away, the officers chased the vehicle and managed to intercept it at Bhoirymbong market. On checking the vehicle, 4 persons were found as occupants and on being questioned they agreed to lead the officers to the exact place where they have hidden the contraband substance.

3. On reaching Liarbang Village, the said persons led the officers to a forested area where 24 packets of compressed blocks wrapped in brown paper suspected to be ganja were found. On due procedure being followed as far as search and seizure is concerned, the contraband substance was removed from the place it was found to the custody of the Customs Officials.



4. The competent authority has then arrested the four occupants of the vehicle namely; Shri. Dilu Joy Rieng, Shri. Sanjib Gohai, Shri. Sujit Kumar Rai and Shri. Vicky Kumar and investigation was launched thereafter.

5. The Investigating Officer, on completion of his investigation has filed the Final Complaint before the court of the learned Special Judge (NDPS), Nongpoh, finding that the accused persons above named are involved in the dealing, storage and transportation of the contraband substance, i.e. cannabis (ganja) weighing about 149.55 kg and thereby, have contravened the provisions of Section 8(c) of the NDPS Act by committing an offence punishable under Section 20(b)(ii)(C) read with Section 23 and 29 of the said NDPS Act. The four accused persons are now undergoing trial before the trial court at Nongpoh. It may be mentioned that another person has also been named as one of the accused in this case, whose name is Sankar Saha said to be the mastermind of the whole operation, but who could not be apprehended till date.

6. Mr. S. Pandit, learned counsel for the petitioner has submitted that the petitioner who is a police constable by profession had come to Shillong on 23.05.2023 along with his friend Shri. Bandu Reang for his friend's medical treatment at NEIGRIHMS and for sightseeing and while in Shillong he met his friend Shri. Sanjib Gohai who is from Tripura.

7. On 24.05.2023, while travelling with Shri. Sanjib Gohai in a Taxi on the way to Bhoirymbong, the vehicle was intercepted by the Customs Officials and on an allegation that some contraband substance, namely,



Ganja was detected at a forested area called Liarbang, Ri-Bhoi District, he along with others were arrested.

8. The learned counsel has submitted that the petitioner is nowhere involved with the alleged offence and there is no iota of evidence to prove his involvement in the case. However, in the Final Complaint filed before the trial court on the statement of the co-accused recorded under Section 67 of the NDPS Act, the petitioner was said to be involved in the case and has been implicated as one of the co-accused.

9. The learned counsel has further submitted that even on perusal of the final report, it is seen that there is nothing in evidence to link the petitioner to the transportation and storage of the alleged contraband substance. As to his connection with the main accused, that is, Shri. Sankar Saha, here too, there is no evidence to prove this allegation and no call details report (CDR) was also produced by the prosecution to prove such connection.

10. The learned counsel has reiterated that on the basis of the statement made by the co-accused under Section 67 NDPS Act, the petitioner could not have been made to stand trial in the case since such statements are not admissible in evidence.

11. Another issue canvassed by the petitioner is that, having been in custody for more than ten months, the progress of the trial being very slow, there is no likelihood of the same being completed in a few months' time and as such, on the ground of delay, the petitioner may be enlarged on bail to allow him to prepare his defence as far as the trial is concerned.



12. In support of his submission, the learned counsel has cited the following cases:

- i. Order dated 04.08.2022 in SLP Criminal No. 4173/2022 passed in Shariful Islam @ Sarif v. State of West Bengal;
- ii. Order dated 05.08.2022 in Criminal Appeal No. 1169 of 2022 passed in Gopal Krishna Patra @ Gopalrusma v. Union of India; and
- iii. Order dated 04.05.2023 in SLP Criminal No. 3221/2023 passed in Hasanujjaman & Ors. v. The State of West Bengal.

13. The petitioner being a Government servant working in the Police Department in Tripura with no criminal antecedent, if enlarged on bail, there is no possibility of him absconding or tampering with the witnesses and he will also abide by the conditions that this Court may impose, submits the learned counsel.

14. Dr. N. Mozika, learned DSGI appearing for the respondent has strongly opposed the prayer made for grant of bail on the ground that a perusal of the Final Complaint and the statement made by the co-accused would reveal that the petitioner is actually involved in the case as his presence in the vehicle along with the co-accused, particularly Shri. Sanjib Gohai at the area of occurrence in the dead of night cannot be explained. In fact, it has been stated that he was particularly referred by the main accused Shri. Sankar Saha to be the recipient of the said



consignment of contraband substance. In such a situation and the accompanying circumstances, it cannot be said that the petitioner herein is prima facie innocent.

15. On the issue of delay, the learned DSGI has submitted that the trial court has diligently proceeded with the trial and has also heard the parties including the petitioner herein before consideration of charges. Vide order dated 21.10.2024 the trial court has considered the matter and has found that there is a prima facie case against the accused person including the petitioner herein and has therefore directed that the charges under the relevant provisions of law be framed accordingly. As such, there is no delay in the trial as alleged by the petitioner. It is prayed that this petition may be dismissed as devoid of merits.

16. This Court on consideration of the argument advanced by the respective parties, has perused the petition as well as the Final Complaint, copy of which has been produced herein.

17. The fact that a large quantity of contraband substance, preliminary tested as cannabis (ganja) was seized from the forested area at Liarbang cannot be denied. There is no evidence as to who has kept the said ganja in the place it was found. But its discovery on the leading of the accused persons can only lead one to understand that there is a nexus between the accused persons and the said consignment.

18. As has been submitted, from the Final Complaint which also contained record of the statement made by the accused persons and other relevant witnesses, the statement made by the petitioner is found contradictory since he has stated that he had gone to the place of



occurrence with Sanjib Gohai by motorbike when the arresting officials have noted that he was found to be one of the occupants of the vehicle bearing registration No. ML 05 Q 6794. In his statement he has further submitted that he was in touch with a ganja dealer who gave him a contact number belonging to one Rabong of Guwahati. Even his friend, Sanjib Gohai has stated that the owner of the ganja is Shri. Sankar Saha and that he was telephonically informed by Sankar Saha that the ganja was at Liarbang (PO) to be delivered to Dilu Joy Reang, the petitioner herein.

19. Though the statement made under Section 67 NDPS Act as well as the statement of a co-accused is not admissible in evidence, however when it comes to consideration of bail, such statement can be taken note of, if not wholly relied upon.

20. Since the case involved seizure of commercial quantity of contraband substance (ganja), therefore, when the question of bail to accused persons involved in such case comes for consideration before the competent court of jurisdiction, the provision of Section 37 of NDPS Act, 1985 cannot be ignored.

21. The said provision reads as follows:-

“[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.]”

22. What would be material here is to look at the provision of Section 37(1)(b)(ii), which provides that on the public prosecutor being heard in the matter, the court must be satisfied that there are reasonable grounds to believe that the accused person is not guilty of the offence alleged and secondly, that he is not likely to commit any offence while on bail.

23. For this Court to believe that the accused persons in question are not guilty of the offence alleged, there must be reasonable grounds for such assumption. What is ‘reasonable ground’ has been discussed and explained in a catena of judgment by the Hon’ble Supreme Court. In this regard, this Court is drawn to the explanation of the expression given by the Hon’ble Supreme Court in *Union of India v. Shiv Shankar Kesari*, (2007) 7 SCC 798. The relevant paragraph for this limited purpose being para 7, 8, 9 & 10 are reproduced herein below:-

“7. The expression used in Section 37(1)(b)(ii) is "reasonable grounds". The expression means something more than prima facie grounds. It connotes substantial probable causes for believing that



the accused is not guilty of the offence charged and this reasonable belief contemplated in turn points to existence of such facts and circumstances as are sufficient in themselves to justify recording of satisfaction that the accused is not guilty of the offence charged.

8. The word "reasonable" has in law the prima facie meaning of reasonable in regard to those circumstances of which the actor, called on to act reasonably, knows or ought to know. It is difficult to give an exact definition of the word "reasonable".

"7. ... In Stroud's Judicial Dictionary, 4th Edn., page 2258 states that it would be unreasonable to expect an exact definition of the word 'reasonable'. Reason varies in its conclusions according to the idiosyncrasy of the individual, and the times and circumstances in which he thinks. The reasoning which built up the old scholastic logic sounds now like the jingling of a child's toy.

(See: Municipal Corpn. of Delhi v. Jagan Nath Ashok Kumar [(1987) 4 SCC 497] (SCC p. 504, para 7) and Gujarat Water Supply and Sewerage Board v. Unique Erectors (Gujarat) (P) Ltd. [(1989) 1 SCC 532]

9. "9. ...It is often said 'an attempt to give a specific meaning to the word "reasonable" is trying to count what is not number and measure what is not space'. The author of Words and Phrases (Permanent Edn.) has quoted from Nice & Schreiber, In re [123 F 987 at p. 988] to give a plausible meaning for the said word. He says

'the expression "reasonable" is a relative term, and the facts of the particular controversy must be considered before the question as to what constitutes reasonable can be determined'.

It is not meant to be expedient or convenient but certainly something more than that."

10. The word "reasonable" signifies "in accordance with reason". In the ultimate analysis it is a question of fact, whether a particular act is reasonable or not depends on the circumstances in a given situation. (See Municipal Corpn. of Greater Mumbai v. Kamla Mills Ltd.) [(2003) 6 SCC 315]"



24. In the considered view of this Court, there are no reasonable grounds to believe that the petitioner is not guilty of the offence alleged and since this bail application has been preferred after the charge sheet has been filed, there is no change in circumstances to allow the prayer of the petitioner.

25. As to the contention on the issue of delay, this Court is in agreement with the submission of the learned DSGI that considering the pace of the trial before the trial court, no delay of the proceedings can be attributed to the trial court. The authorities relied upon by the petitioner in this regard will not be applicable.

26. Under the facts and circumstances of this case, this Court finds that no case has been made out for grant of bail to the petitioner at this stage. Petition is accordingly dismissed.

27. Petition disposed of. No costs.

Judge