

IN THE HIGH COURT OF MANIPUR

AT IMPHAL

B.A. No. 20 of 2021

1. Manglinhao Zou, aged about 35 years, s/o Khamlianhang Zou, resident of Moreh Ward No. 3, Tengnoupal, Manipur Sub Division Chandel, Manipur-795131.
2. Ms. Nongaihlian Zou, aged about 31 years, D/o Khamlianhang Zou, resident of Moreh Ward No. 03 Moreh, PS-Moreh, Manipur-795131

***... Accused Persons/Petitioners.
(Now in judicial custody)***

-Versus -

Narcotic Control of Bureau, Imphal, now at Changangei, near Airport Road, Imphal West, Manipur.

.....Respondent.

B E F O R E

HON'BLE MR. JUSTICE AHANTHEM BIMOL SINGH

For the petitioners : Mr. Ch. Bimolchandra, Advocate
For the respondent : Mr. N. Brojendro, Singh, Advocate
Date of Hearing : 06.12.2021.
Date of Order : 18.01.2022

ORDER **(CAV)**

Heard Mr. Ch. Bimolchandra, learned counsel appearing for the petitioners and Mr. N. Brojendro Singh, learned counsel appearing for the respondent.

[2] The present petition has been filed by the petitioners under section 439 of the CrPC read with section 37 of the ND&PS Act for enlarging them on bail in connection with NCB Crime No.

05/04/NCB/Imp/WY/CL/2020 dated 07.12.2020 u/s 8 (c), 22 (c), 27-A and 29 of the ND&PS Act, 1985.

[3] The prosecution case is that on receiving reliable specific information about the illegal production and processing of Methamphetamines Tablets at a Makeshift Clandestine Laboratory at Ward No. 3 near public ground, Moreh, a team of NCB Officials with the help of personnels of 43 Bn. Assam Rifle and some Panchas conducted a raid on 07.12.2020 at about 15.30 hours for necessary search and seizures. In the said raid, 3 (three) persons were found inside the suspected wooden house and during the search operation a large quantity of Methamphetamine and other items were found and the same were seized after following due process. Thereafter, acting on the input provided by one of the suspected persons, the aforesaid team of NCB along with the personnels of AR and Panchas proceeded to a suspected location supposed to be producing and processing Methamphetamine at a Makeshift Clandestine Laboratory located at Moreh Ward No. 3, Tengnoupal, near Tamil Temple, Manipur and conducted another search operation. In the said such operation conducted inside the suspected house, the team found 3 (three) persons along with a large quantity of Methamphetamine and other drugs and illegal items and the same were seized after following due process. In connection with the seizure of the said illegal drugs and other items, the accused persons including the present petitioners

were arrested and they have been placed under judicial custody till today.

[4] The learned counsel for the petitioners submitted that the NCB never collected or seized the contraband drugs from the possession or at the instance of the petitioners and that the petitioners are merely eye-witness of the seizure of the said seized contravene articles. It has also been submitted that the said contraband drugs and articles were seized from the room occupied by the other co-accused and that the petitioners are not the owners, occupiers or possessors of the said seized illegal psychotropic substances and they are innocent of all the charges level against them.

[5] It has also been submitted by the learned counsel appearing for the petitioners that the petitioners have no idea, knowledge or information of any of the activities, viz., produce, manufacture, possess, sell, warehouse, import, export, etc., of the said contraband substances seized from the room of the other co-accused and that they have nothing to do with the said co-accused and that they have been falsely implicated in the present case without any shred of evidence against them.

[6] It has been submitted that at the time of the alleged seizure, the arresting authority did not comply with the mandatory provisions under section 41, 42 and 50 of the ND&PS Act as well as the mandatory provisions under section 100 and 165 of the CrPC and as such, the alleged seizure and arrest were made without any authority. It has also

been submitted that at the time of the search of and alleged seizure, there were no independent witnesses and as such the petitioners are entitled to be enlarged on bail. In support of his contentions, the learned counsel for the petitioners had relied on the judgments of the Apex Court in the case of (i) **“Narcotic Central Bureau – Vs – Sukh Dev Raj Sodhi”** reported in 2011 AIR (SC) 1939, (ii) **“Ashok Kumar Sharma –Vs- The State of Rajasthan”** reported in (2013) 2 SCC 67, (iii) **“Union of India –Vs- Jassuram”** reported in 2002 Legal Eagle (SC) 466 and (iv) **“Abdul Rahman –vs- The State of Kerala”** reported in (1997) 11 SCC 93.

[7] The next ground advanced by the learned counsel appearing for the petitioners is that the memorandum of arrest is defective and the search-cum-seizure list was wrongly prepared by the I.O. of the case and such documents are false and fabricated documents. It has also been contended that the search and seizure was conducted by the personnel of the Assam Rifles as can be seen from the newspaper report issued on the next day of the said raid and in view of the above, the petitioners are entitled to be enlarged on bail.

[8] Countering the submissions advanced by the learned counsel appearing for the petitioners, it has been submitted by the learned counsel appearing for the respondent that at the time of conducting the search operation, the present petitioners were found along with the other co-accused, viz., Mr. Waipho, inside his room engaging themselves in packaging of Methamphetamine Tablets and the search

party seized a large commercial quantity of 128.07 kgs of Methamphetamine Tablets from the room where the said 3 (three) accused persons were found. Thereafter, the NCB Officer, who seized the contraband drugs and articles, submitted a detail seizure report to the SP, NCB, Imphal, within 48 hours of the seizure and as such, there is no violation of the seizure formalities as provided under section 42 of the ND&PS Act 1985. It has also been contended by the learned counsel that provisions of section 50 of the ND&PS Act deals with the procedure for conduct of physical search of persons and accordingly, provisions of section 50 are not applicable in the present case inasmuch as, the search and seizure was made from inside a room and not on the personal search on the body of the accused persons. In view of the above, it has been submitted by the learned counsel that the authorities relied on by the learned counsel appearing for the petitioners, which deals with the search and seizure under section 50 of the ND&PS Act, are not applicable in the facts and circumstances of the present case.

[9] It has further been submitted by the learned counsel for the respondent that the authorities complied with the provisions of section 100 and 165 of the CrPC as the search and seizure was carried out in the presence of 2 (two) independent witness namely viz., Anilkumar and H. Subadani Devi, who put their signature as Pancha witnesses in the search-cum-seizure list in presence of the accused persons.

[10] It has been submitted on behalf of the respondent that mentioning of the name of Paokhothang Haokip in the 9th line of Para 2 of the memorandum of arrest was due to slip of pen and that the name of the petitioner No. 1 was clearly mentioned in the third line of the said memorandum of arrest and he put his signature in the memorandum of arrest and accordingly, such slip of pen does not affect the fact of arrest of the petitioner in connection with the case. It has also been submitted that the newspaper reports are hearsay in nature and the same are not admissible as evidence and that the petitioners are involved in commission of heinous crime of trafficking/ manufacturing/ selling of drugs and psychotropic substances and they may continue to do so even after their release on bail, as such business are said to be highly profitable. Accordingly, the learned counsel prayed for rejecting the present bail application.

[11] It may be mentioned here that the present petitioners have already approached the learned Special Court (ND&PS), Manipur, for enlarging them on bail by filing Cril. Misc. (B) Case No. 34/2021 and Cril. Misc. (B) Case No. 35/2021. The said 2 (two) bail applications were rejected by the learned Special Court (ND&PS), Manipur by a common order dated 17.04.2021 after considering the submissions advanced on behalf of the present petitioners and by giving a reasoned order.

[12] After hearing the rival submissions of the learned counsel appearing for the parties and on perusal of the records of the present

case as well as the aforesaid order dated 17.04.2021 passed by the learned Special Court (ND&PS), Manipur, this Court is of the considered view that all the grounds and submissions advanced by the learned counsel appearing for the petitioners in the present bail application have been considered and rejected by the learned Special Court (ND&PS), Manipur, by giving a reasoned order. This Court endorse and agrees with the reasons given by the learned Special Court (ND&PS), Manipur, in its order dated 17.04.2021 passed in the aforesaid 2 (two) bail applications filed by the present petitioners. As no new grounds or materials have been brought before me in the present bail application, I do not find any ground or reason for enlarging the present petitioners on bail. Accordingly, the present bail application is hereby rejected.

JUDGE

FR/NRF

Sapana