

Serial No. 01
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

BA. No. 10 of 2021

Date of Decision: 01.10.2021

Azibar Rahman

Vs.

State of Meghalaya

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioner/Appellant(s)

Mr. A. Rahman, Adv.

For the Respondent(s)

Mr. H. Kharmih, 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 |

1. Matter is taken up via video conferencing.
2. This is an application u/s 439 Cr. PC r/w Section 36-A (3) of the NDPS Act filed by the Petitioner herein seeking grant of bail to 2(two) accused persons namely Sonowal Ali and Jahal Uddin who were arrested on 30.04.2021 in connection with Jowai PS Case No. 50(4)2021 u/s 8(e)/21(c) NDPS Act.
3. It is the averment of the Petitioner that on 29.04.2021, an FIR was lodged by one Shri A. R. Marak, S.I of Phramer Traffic Cell to the effect that during naka checking near Pharmer, National Highway-6, one truck bearing registration No. AS-25-EC-3411 on being stopped for checking refused to

stop which led to the police to chase the vehicle and to intercept it near the toll gate Lalong on National Highway-6. On checking the said vehicle, some suspicious packages were found in the back of the vehicle under one sofa set, the contents of which appears to be contraband item. Accordingly, the two accused persons named above being the driver and the handyman of the said truck were arrested on 29.04.2021 and were produced before the court of the learned Special Judge NDPS, West Jaintia Hills District, Jowai and forwarded to judicial custody.

4. It is also averred that the accused persons are innocent and have no knowledge regarding the alleged illegal contraband found from the vehicle. The accused persons were also thoroughly interrogated during investigation and no incriminating materials was found from them and as such, as per section 37 NDPS Act, there is no reasonable ground to believe that the accused persons are guilty of the commission of the alleged offence.

5. The accused persons being innocent and having both moveable and immovable property with no intention to abscond or tamper with evidence and also being the earning hands of the family, they may be accordingly enlarged on bail with any conditions that this Court may deem fit and proper to impose.

6. Heard Mr A. Rahman, learned Counsel for the Petitioner who has submitted that the accused persons are already in custody for more than 148 days and as such, they may be enlarged on bail. It is further submitted that one of the co-accused in this case has been released on bail.

7. Mr H. Kharmih learned GA speaking on behalf of the State/Respondent has submitted that the accused persons have been arrested for possession of contraband substance, that is, cannabis and the quantity seized is also huge being about 422.15 kg which is more than commercial quantity and as such, this application may not be allowed at this stage, submits Mr. Kharmih.

8. Upon hearing the learned Counsels appearing for the parties, the case dairy having been produced before this Court, the same was accordingly perused. What is seen is that it is a fact that the accused persons Sonowar Ali and Jahan Uddin were apprehended along with another person Amit Sarkar on 29.04.2021 suspected to be in possession of contraband substance (cannabis) which was seized from the truck they were travelling in. On due procedure being carried out as per the legal provisions, they were arrested and are in judicial custody till date. The IO after the expire of 90 days has sought for extension of the period of another 90 days to complete the investigation and the Court of the learned Special Judge(NDPS), Jowai has allowed the same vide order dated 06.08.2021.

9. It is also seen that all the three accused persons are still in judicial custody and therefore the submission of the learned counsel for the Petitioner that one of the accused has been enlarged on bail is not correct and as such, even if the prayer for enlargement on bail is made on the ground of parity, the same would not apply in this case.

10. Again, the records would reveal that the accused persons have been arrested in connection with an offence under the NDPS Act and accordingly, this application for bail is made under the provision of section 439 Cr. PC r/w Section 36-A (3) NDPS Act. However, it is also to be noted that an application for bail under the NDPS Act is circumscribed by the provision of section 37 of the said NDPS Act.

1. Section 37 NDPS Act 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 an 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].”

12. The mandatory conditions provided in section 37 is that bail cannot be granted unless two conditions are fulfilled i.e.:

- (i) There are reasonable grounds for believing that the accused is not guilty of such offence; and
- (ii) That he is not likely to commit any offence while on bail.

13. On the touchstone of the above provisions, the factual situation in the case in hand from the case diary produced before this Court would reveal that the accused person for whom bail has been prayed for are the driver and the handyman of the truck from which the alleged contraband was seized. The provision of section 50 of the NDPS Act with regard to search and seizure was also carried out as per the said provision. That the quantity of the alleged contraband recovered from the said vehicle and duly seized is about 421 kgs or so and on preliminary test, the substance was found to be cannabis which is a narcotic substance would also attract the provision of section 21(c) NDPS Act and therefore section 37 comes into play.

14. In this instant case, the public prosecutor has been duly heard and as pointed out above, this Court finds that there are no reasonable grounds for believing that the accused persons are not guilty of such offence.

15. In the light of the above, this Court is constraint to disallow the prayer of the Petitioner for grant of bail on behalf of the accused person above named and is of the opinion that at this juncture, bail cannot be granted.

16. Accordingly, this application is hereby dismissed as devoid of merit.

17. Registry is directed to send back the case diary.

Judge

Meghalaya
01.10.2021
"N. Swer, Stenographer"

