

Serial No. 01
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

BA. No. 60 of 2023

Date of Decision: 06.12.2023

Smti. Rupa Gurung

Vs.

State of Meghalaya

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioner/Appellant(s) : Mr. R. Gurung, Adv.
Mr. J. Thabah, Adv.
Ms. S. Shyam, 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. An FIR dated 19.05.2023 was lodged before the Officer-in-Charge, Nongpoh Police Station, Ri-Bhoi District, Nongpoh by S.I. Amit Sinha, Byrnihat Outpost. In the detailed FIR, what has been revealed is that on receipt of reliable information about a person suspected to be

carrying contraband goods coming from Guwahati towards Shillong, a Naka checking was conducted at NH-06 road near Byrnihat Outpost on 18.05.2023 at about 9:15 pm, whereupon one local taxi bearing registration No. ML-04-D-4711 was intercepted and on the vehicle being checked, the driver and two passengers were found present in the said vehicle. On being questioned, the passengers admitted that they are carrying illegal contraband on their person and on a body search being conducted, after due procedure was followed, three soap boxes containing suspected heroin was found from the undergarment of Shri. Sohan Gurung and another three were also found from the person of Shri. Pramod Bordewa. The two persons were accordingly arrested and a case being Nongpoh P.S. Case No. 55 (5) 2023 under Section 21(b)/29 of the NDPS Act was duly registered.

2. The investigation being concluded, the Investigating Officer on 19.06.2023 had filed the charge sheet finding a prima facie case under Section 21(b) NDPS Act well established against the said accused persons, Shri. Sohan Gurung and Shri. Pramod Bordewa respectively. The case is now at the stage of consideration of charges.

3. Mr. R. Gurung, learned counsel for the petitioner has

submitted that the petitioner has now approached this Court with an application under Section 439 Cr.P.C praying for the accused Shri. Sohan Gurung to be enlarged on bail on his being arrested in connection with Nongpoh P.S. Case No. 55 (5) 2023, the petitioner being the wife of the said accused person. It is also submitted that the charge sheet having been filed, the accused is no longer required for questioning and the fact that since the time when the charge sheet was filed in the month of June 2023 till date, the matter has not proceeded and is still at the stage of consideration of charges and as such, the accused may be allowed to be enlarged on bail to enable him to defend his case in a proper manner. It is further submitted that the accused person in question is the sole bread earner of the family with his wife and minor children and as such, being incarcerated in custody, his livelihood is hampered and his family is suffering as a consequence thereof.

4. The alleged contraband drugs seized from the accused person being of an intermediate quantity, therefore, the embargo under Section 37 NDPS Act as far as the consideration of bail is concerned, is not applicable. Therefore, on this ground alone, the accused person may be allowed to be enlarged on bail.

5. The case of Smti. Lily Sitlhou v. State of Meghalaya & another was referred to by the learned counsel for the petitioner, wherein vide order dated 16.11.2023, this Court in BA. No. 55 of 2023, had allowed the accused person therein to go on bail, the quantity of the alleged seized contraband drugs being of an intermediate quantity. This case is squarely covered as far as the case of the accused person in question is concerned, submits the learned counsel. It is therefore prayed that this petition may be allowed with any conditions to be imposed by this Court.

6. Mr. N.D. Chullai, learned AAG appearing on behalf of the State respondent has submitted that the case diary as directed, has been produced before this Court and on perusal of the contents therein, it can be seen that a case has been made out against the accused person in question when the Investigating Officer has noted that the illegal contraband drugs, particularly heroin of about 33.82 grams have been seized from his person, the complicity of the accused person having been established, there is no merit as far as this application is concerned, and considering the severity of the offence involved, this application is liable to be dismissed.

7. This Court have carefully considered the submission made by

the parties and have also perused the case diary and is aware of the fact that the charge sheet has been filed and the matter has been put up before the regular Special Court for trial.

8. The argument of the petitioner should have been confined to the merits of the case, however, the learned counsel for the petitioner has fairly admitted that there is no denying the fact that the said alleged contraband drugs of about 33.82 grams was seized from the accused person.

9. One of the factors to be considered in a case for grant or refusal of bail is for the Court to look into the nature of the case, the seriousness thereof and the severity of the punishment involved, not to lose sight of the fact that the individual rights and interests has to be counter-balance with that of the rights and interests of the society at large.

10. The menace of drug trafficking and the availability of such narcotic drugs in society, particularly in our society is evident basing on the reports that is available, wherein it is said that the level of drug addiction has increased alarmingly affecting the younger generation. Nevertheless, the police are trying to combat this evil by various means, more often than not, the ringleaders or the kingpins as far as drug peddling

is concerned, are yet to be apprehended. Be that as it may, the availability of such narcotic drugs has to be stopped at all costs. Though, a legal procedure has to be followed, the seriousness of the issue cannot be overlooked by any law abiding citizens or law enforcers or even by this Court for that matter. However, technically, in specific cases involving narcotic drugs and psychotropic substances, the rigors of Section 37 NDPS Act may not be applicable, nevertheless, if there is even a hint of prima facie involvement, particularly in cases where direct seizure is made from a person, it would be better to let the law take its own course, ala a proper trial.

11. In the case of Smti. Lily Sithou (supra) cited by the learned counsel for the petitioner, this Court has considered the case of the accused person therein and has enlarged her on bail, even though the seizure of the alleged contraband drugs was that of an intermediate quantity, but the fact that the said contraband drugs has not been seized from the accused person in that case, the Court has accordingly granted her bail. The case, therefore, has no relevance to the fact situation in this present case.

12. In view of the observations made hereinabove, this Court is of

the opinion that the petitioner has not been able to make out a case for grant of bail. This petition is accordingly dismissed and stands disposed of. No costs.

Judge

Meghalaya
06.12.2023
"D. Nary, PS"

