



<p>Serial No. 01 Regular List</p>

HIGH COURT OF MEGHALAYA
AT SHILLONG

BA. No. 32 of 2024

Date of Decision: 26.09.2024

Smti Esther Syiem aged about 51 years,
Wife of Shri. Ricky Diengdoh,
R/o Fifth Mile, Upper Shillong,
East Khasi Hills District,
Meghalaya.

::::: **Petitioner**

- Vs-

1. The State of Meghalaya
Represented by Secretary (Home)
Government of Meghalaya.

2. The Superintendent of Police,
Ri-Bhoi District, Meghalaya.

::::: **Respondents**

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

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

For the Respondent(s) : Mr. R. Gurung, GA.

i) Whether approved for reporting in Law journals etc.: Yes/No

ii) Whether approved for publication in press: Yes/No

ORDER (ORAL)



1. On receipt of credible information, the police of Ri-Bhoi District had conducted a Naka checking at Umsning Junction, Bypass on NH-06 on 30.06.2023 at around 8:00 pm. In the process, one vehicle bearing No. ML 05 K 0314 was intercepted with two occupants inside, one of them being the son of the petitioner herein named, Daniel Syiem. Upon questioning of the said occupants, the police came to know of a location, wherein a consignment of drugs was hidden. Immediately, necessary steps were taken and with the help of sniffer dogs and iron box suspected to contain contraband was found. On opening it, 70(seventy) soap boxes containing orange powder, later proved to be heroin was discovered. The place where the said drugs were found happens to be the farm house belonging to an uncle of one of the intercepted persons named, Ronand Kyndiah. Accordingly, an FIR was lodged before the Officer-In-Charge, Umsning Police Station on 01.07.2023 and the two persons abovenamed were arrested in connection with Umsning P.S. Case No. 21 (7) 2023 under Section 21(c)/29 NDPS Act. It may be mentioned that on the information given by the detained duo, another suspect was also arrested in this case.

2. After investigation was conducted, the Investigating Officer



(I/O) on conclusion thereof, had filed his final report including the charge sheet on 14.12.2023, the stage of the case at present is for consideration of charges.

3. Mr. S.S. Yadav, learned counsel for the petitioner has submitted that this instant petition has been filed by the mother of the accused Daniel Syiem, who is still in custody since the date of his arrest having been incarcerated for more than a year till date. The prayer made in the petition is for grant of bail on behalf of the accused person.

4. The learned counsel while presenting his case, has embarked on a two-prong contention, firstly, on the ground that there has been a commission of grave illegality and irregularity, inasmuch as, due compliance with the relevant provisions of the NDPS Act have not been followed by the arresting authorities and secondly, on the ground of serious ailment of the petitioner which warrants enlargement on bail.

5. The learned counsel has pointedly referred to the provision of Section 52A of the said NDPS Act and the related Rules, particularly the Narcotic Drugs and Psychotropic Substances (Seizure, Sampling and Disposal) Rules, 2022 to say that in course of investigation, the relevant rules that is, Rule 3, 8, 9 and 10 have been floated, inasmuch as,



representative samples from all the soap cases numbering about 70(seventy) which were seized were not drawn.

6. The learned counsel has further clarified this contention to submit that the relevant authorities upon seizure of the said 70(seventy) numbers of soap cases said to contain heroin, the contents from all the 70(seventy) soap cases were emptied into a single container wherefrom, sample was taken for verification of the said substance. The procedure, according to Rule 12 of the said 2022 Rules, however is that one sample, in duplicate shall be drawn from each package and container seized which was not done so in the instant case.

7. It is also the submission of the learned counsel that the provision of Section 52A of the Act has not been complied with, since no certificate has been issued certifying the correctness of the sample drawn. Leading this Court to Annexure-XI of this petition which is the Inventory Report purportedly prepared in compliance with sub-Section 3 of Section 52A of the NDPS Act, the learned counsel has submitted that in such list of inventories which are seizure items noted in seriatim, the first one at serial No. 1 being the seizure of 'orange whitish powder' the second being '70(seventy) nos. of empty soap boxes kept inside 1(one) Tinbox',



however, there is no noting or indication of seizure of the sample drawn, and as such, this would only indicate that the relevant provisions have not yet been followed. The said Inventory Report also has no signature, name and designation of the Magistrate, therefore, the said report cannot be taken into account.

8. In support of his contention, the learned counsel has relied on the following cases:

- i) Simarnjit Singh v. State of Punjab in Criminal Appeal No. 1443 of 2023, order dated 09.05.2023, para 8 (Supreme Court);*
- ii) Yusuf @ Asif v. State in Criminal Appeal No. 3191 of 2023, order dated 13.10.2023, para 15 & 16 (Supreme Court);*
- iii) Amal v. State of Kerala in Bail Application No. 1790 of 2024, order dated 21.06.2024, para 4, 24, 25, 26, 27 & 28 (High Court of Kerala);*
- iv) Lakshman Thakur v. State (Govt. of NCT of Delhi) in Bail Appln. No. 3233/2022, order dated 14.12.2022, para 9, 10, 11, 12 & 13 (High Court of Delhi); and*



v) *Miss Nisha Chettri v. State of Meghalaya & Anr in BA. No. 1 of 2024, order dated 14.02.2024, para 7, 16 & 17 (High Court of Meghalaya).*

9. The next contention of the learned counsel is that the accused son of the petitioner is suffering from a number of ailments such as, Hepatitis, Borderline Hepatic Steatosis and also Ulcerative Colitis, apart from the fact that when he was medically examined at Civil Hospital, Shillong on 26.07.2024, he was diagnosed with Major Depressive Disorder coupled with suicidal thoughts, for which the Psychiatrist Incharge of Psychiatry Civil Hospital, Shillong, in his opinion, has stated that the patient need strong family support to prevent further deterioration. Even, when he was once again medically examined at Civil Hospital on 09.08.2024, the doctor has reported that the patient/accused has a history of Major Depressive Disorder and suicidal thoughts, he was also referred to CMC, Vellore for treatment relating to Ulcerative Colitis. On this ground alone, the accused son of the petitioner may be enlarged on bail, submits the learned counsel. The case of *State of Meghalaya v. Shri. Arjun Deshwal in Crl.Petn. No. 14 of 2018*, order dated 03.08.2018, para 5, 6, 9, 10, 11, 12, 13, 14 & 16 (High Court of



Meghalaya) have been referred to in this regard.

10. Finally, the learned counsel has submitted that this petition may be allowed, and a direction be given for release of the accused son of the petitioner on bail with any conditions to be imposed by this Court.

11. Per contra, Mr. R. Gurung, learned GA appearing for the State respondent, while contradicting the contention and submission made by the learned counsel for the petitioner has laid stress on the fact that this is a case involving narcotic drugs and in the context of the prevailing situation in the State where cases of drug addiction is rampant, the fact is that the accused son of the petitioner is part of a team alleged to be involved in drug trafficking, admittedly having been linked to the seizure of a huge quantity of drugs, would only demonstrate the gravity of the offence said to have been committed by him, and as such, he may not be enlarged on bail at this stage.

12. As to the plea of ailment, the learned GA has submitted that a perusal of the medical report which are annexed with the affidavit filed by the petitioner pertaining to the medical condition of her son, what is noticed is that such ailments are not life threatened, but can be treated even in the medical institutions in the State. As such, on this ground also,



the accused person may not be allowed to go on bail.

13. This Court is not blind to the prevailing situation in the State as has been emphasized by the learned GA where a large number of persons mostly youths are caught in the grip of drug addiction. It requires no rocket science to conclude that the presence of drugs and other addictive substances in society is the result of a constant flow of supply and demand. It is commendable to note that the police have taken this task seriously and lately, a number of cases of seizure of such substances have been recorded with an equal number of arrests being made.

14. Needless to say, in the quest and zeal to accomplish their mission, the arresting authorities may have committed errors as far as procedure is concerned. The fact remain that the culmination of such effort will only be tested at the trial.

15. The petitioner in this petition has sought to highlight such procedural error, and has also referred to relevant authorities to bring home this point. Though, the authorities cited by the learned counsel for the petitioner may not be required to be discussed individually, suffice it to say that most of what has been observed or held in such cases is the cause and effect as well as the implication of the provision of Section



52A and the related rules, even though if found applicable to the case of the accused son of the petitioner, such consideration can only be taken up in course of the trial. In fact, as has been contended by the learned GA, it is open to the concerned accused to take up this issue before the Trial Court at the time of consideration of charges.

16. It need not be reminded that the offence alleged to have been committed by the accused son of the petitioner and others is one under Section 21(c) of the NDPS Act, which speaks of seizure of a commercial quantity of illegal contraband substance, and as such, the rigors of Section 37 of the said NDPS Act would be applicable. The provision of Section 37, vis-à-vis, the grant or non-grant of bail begins with a non-obstante clause which means that grant of bail would be in the negation, the onus or burden of proof being cast upon the accused who is seeking grant of bail, the presumption of the court being that the accused is guilty of the alleged offence provided he can convince the court with reasonable grounds to believe otherwise.

17. On this ground alone, that is, by virtue of the provision of Section 37, this Court is not inclined to allow the accused son of the petitioner to be enlarged on bail.



18. However, even as the analogy of Section 437 Cr.P.C is taken as an example, wherein bail in non-bailable offences is not granted, except on certain exceptions, sickness being one of them, therefore, notwithstanding the provision of Section 37 NDPS Act under the peculiar facts and circumstances of the case of the accused son of the petitioner who has ably demonstrated by way of records, particularly the opinion of the doctors that he is urgently required to be suitably given medical treatment, even at the CMC, Vellore, this Court on such consideration would allow the prayer made, albeit, not in the complete sense.

19. In this regard, the case of Shri. Arjun Deshwal (supra) cited by the petitioner is found relevant, particularly para 10, 11, 12 & 16 which are reproduced herein below:

“10. *Allegedly, the accused has committed very heinous offence and for commission of such offence law provide stringent punishment, but punishment is possible only when there is trial and trial is possible only when the accused is alive and fit to face trial.*

11. *When the accused admittedly is suffering from mental disorder and under treatment, would it not be appropriate to invoke exceptional clause “sick” as incorporated in proviso to sub-section (1) of Section 437 Cr.P.C. the answer has to be in the affirmative. Degree of “sickness” of the respondent is such which warrant special consideration.*



12. *Medical prescription and medical status report as annexed to rejoinder affidavit filed by petitioner (State) is suggestive of the fact that the respondent has been diagnosed a case of depression/psychiatric illness. On 18th July, 2018 on review of his health condition it has been opined as under “Presently, based on the above findings, patient is still unfit to stand trial”. There are other medical prescriptions on record which also suggest that as on date the respondent has aggravated mental disorder.*

16. *While taking into consideration the entire gamut of the case more particularly “sickness” of the respondent, he is required to be released on bail so that he can be taken proper care of by his family members. Though proper medical care and all medical facilities have been made available to him from the day he has been taken into custody but till date there is no improvement, suggesting that for improving his mental condition homely atmosphere may be required. Therefore, the accused (respondent) be released on furnishing fresh surety bond of Rs. 50,000/- to the satisfaction of Joint Registrar (J). He shall be handed over to his brother Shri Sunny Deshwal who is stated to be looking after the welfare of the respondent so shall take proper care and will also ensure his presence before trial on date as shall be scheduled if not already scheduled. Trial court shall follow the procedure as prescribed under Chapter XXV Cr.P.C. dependent thereon and the health condition of the respondent, it shall be open to the petitioner (State) to seek cancellation of bail if at any point of time circumstances so warrant. Such request if made shall be considered by trial court on its own merit. Copy of this order be sent to trial court for information.”*

20. Accordingly, on the ground of sickness and requirement of



medical treatment, this Court would grant interim bail to the accused son of the petitioner only for the purpose of allowing him to go for medical treatment at CMC, Vellore in the State of Tamil Nadu.

21. Consequently, the accused son of the petitioner is hereby directed to be released on interim bail for a period of 60(sixty) days from the date of this order on the following conditions that:

- i) He shall provide his travel itinerary to the court concerned as and when he intends to proceed for the said medical treatment;
- ii) He shall also provide his contact number as well as the contact number of the attendant who would accompany him to the place of treatment;
- iii) He shall bind himself on a personal bond of ₹ 1,00,000/- (Rupees one lakh) with one surety of like amount to the satisfaction of the court concerned; and
- iv) He shall report to the Superintendent, District Prisons and Correctional Home, Shillong, East Khasi Hills on **27.11.2024** for continuation of his custody.



22. It is made clear that violation of any of the conditions stated hereinabove would enable the prosecution to seek for cancellation of bail which could be done so before the Trial Court.

23. With the above, this petition is accordingly disposed of. No costs.

Judge