



Serial No. 01
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

BA No. 4 of 2020

Date of Decision: 09.07.2020

Smti Therina Sumer

Vs.

Union of India

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioner/Appellant(s)	:	Mr. P. Yobin, Adv.
For the Respondent(s)	:	Dr. N. Mozika, Sr. Adv. with Mr J. Shylla, Adv.

i)	Whether approved for reporting in Law journals etc.:	Yes/No
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ii)	Whether approved for publication in press:	Yes/No
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1. The petitioner herein is the mother of Shri Kitborlang Sumer who was apprehended and arrested by the Custom Officials in connection with a case under the Narcotic Drugs and Psychotropic Substances (NDPS) Act, 1985 registered as Custom NDPS Case No. 01/CL/NDPS/HQRS.PREV/SH/2019-2020 under Section 20 (b) (ii) C of the said NDPS Act.

2. The learned counsel for the petitioner Mr. P. Yobin in his submission before this Court, has pointed out that the accused was arrested on 26.05.2019 on the basis of an FIR and related seizure memo dated 26.05.2019. He has been remanded to judicial custody and is in custody for about 371 days or more.

3. The learned counsel has also submitted that the accused has approached the Court of the Special Judge (NDPS), Nongpoh, with related bail applications which were rejected vide order dated 24.02.2020 and



05.06.2020 respectively on the ground that the investigation is yet to be completed.

4. It is the submission of the learned counsel that the accused is innocent as he is a driver by profession and was directed by the owner of the goods to drop the same at Nongpoh and after reaching Nongpoh, he was directed to proceed to Umling, where he was apprehended by the Custom officials at the Toll Gate.

5. Another limb of submission advanced by the learned counsel for the petitioner is that, the respondent/Custom is in the process of investigation into the involvement of one Shri Synshar Nongrum, who is presently in custody in another NDPS case in the Court of the Sessions Judge, Kamrup (M), Guwahati who is the actual owner of the goods seized from the vehicle driven by the accused, wherein the case is still in the investigation stage and as such, the investigation has not yet been completed.

6. Since the investigation has not been completed and the accused Shri. Kitborlang Sumer is in custody for more than 371 days much more than the mandatory period of 180 days required for filing of the Charge-Sheet, therefore it is submitted that the accused is entitled to be enlarged on default bail under section 167(2) Cr.P.C.

7. To support his case, the learned counsel for the petitioner has cited the case of ***Thana Singh v. Central Bureau of Narcotics: (2013) 2 SCC 603*** and the case of ***Manik Sahebrao Chaugule v. The State of Maharashtra: (2017) SCC Online Bom 3402***.

8. Finally, the learned counsel has submitted that if enlarged on bail, the accused will not abscond or tamper with the evidence and that he is ready to offer sufficient sureties and to comply with any conditions to be imposed by this Court.

9. Dr. N. Mozika, learned Sr. counsel assisted by Mr. J. Shylla, learned



counsel appearing on behalf of the Custom Department has strongly opposed this bail application, on the ground that the seized contraband was found from the conscious possession of the accused who, in his statement had admitted that he is aware of the said contraband being transported in the vehicle driven by him.

10. The contraband goods being Ganja weighed about 318 Kgs packed in 20 HDPE bags, as such as per the NDPS Act falls under the category of commercial quantity.

11. The learned Sr. counsel has also submitted that on the basis of the statement of the accused, the owner of the Ganja is one Synshar Nongrum and on investigation, it was found that he is in custody in another NDPS case pending in the Court of the Sessions Judge, Kamrup (M) Guwahati. The I/O in this case has sought the permission of the learned Sessions Judge, Kamrup to interrogate the said Synshar Nongrum, which was allowed vide order dated 23.12.2019. However, the same could not be completed on account of the lockdown situation because of the corona virus pandemic.

12. The learned Sr. counsel has further submitted that as far as the accused Shri. Kitborlang Sumer is concerned, the charge sheet/final complaint has already been filed since 21.11.2019, which is within the mandatory period of 180 days from the date of arrest and as such, the contention of the learned counsel for the petitioner that the charge sheet/final complaint has not yet been filed is not correct.

13. Referring to the provisions of Section 37 of the NDPS Act, the learned Sr. counsel has submitted that the burden of proof for establishing his innocence lies on the accused and in the absence thereof, the Court could not enlarged the accused on bail. In this case, as submitted above, the accused had clearly admitted to have known about the presence of the said contraband (Ganja) in the vehicle driven by him, and as such, he cannot escape liability by pleading his innocence in this regard.



14. It is therefore prayed that this application is devoid of merit and is liable to be rejected.

15. I have heard the argument of the learned counsels for the rival parties and I have also gone through the application in hand. The copy of the Final Complaint of Shri Kitborlang Sumer, dated 21.11.2019 filed before the Court of the learned Special Judge, Nongpoh was also produced before this Court for perusal.

16. Facts which are not disputed is that the accused Shri. Kitborlang Sumer was apprehended by the Customs Officials and on being found to have in his possession (the vehicle he was driving) about 318 Kgs of contraband goods suspected to be Ganja, he was accordingly arrested on 26.05.2019 and a case under Section 20 (b) (ii) C of the NDPS Act, 1985 was registered in this regard. The said accused is also admittedly still under judicial custody till date.

17. The one point limb of argument advanced by the learned counsel for the petitioner was that the accused having been in custody for more than the mandatory period of 180 days as stipulated under Section 36 A (4) of the NDPS Act and the charge-sheet/Final Complaint have not been filed, therefore the benefit of default bail as provided under Section 167 (2) Cr. P.C. has to be accorded to the accused.

18. In the case of **Thana Singh v. Central Bureau of Narcotics (supra)**, the case concerns the incarceration of an accused for over 12 years in an ongoing trial and which does not seem to be concluded speedily. Hence, bail was granted notwithstanding the provisions of Section 37 of the NDPS Act.

19. The next case relied upon by the learned counsel for the petitioner is the case of **Manik Sahebrao Chaugule v. The State of Maharashtra (supra)**, in which the Hon'ble Bombay High Court had granted bail to the accused prosecuted for the offence punishable under Sections 8 (c), 20 and 29 of the NDPS Act, taking resort to the provision of Section 167 (2) Cr.



P.C. on the ground that the charge sheet was filed without report of the Chemical Analyzer and as such, the said charge sheet was deemed incomplete allowing the accused therein to get the benefit of the said Section 167(2) Cr.P.C.

20. However, under the facts and circumstances of the case of the accused, this Court finds that the charge sheet/final complaint as against the accused Shri. Kitborlang Sumer was complete and the same was filed before the concerned Court with a prayer to file a supplementary Chargesheet as regard the other co-accused Shri. Synshar Nongrum. Therefore, the two decisions relied upon by the learned counsel for the petitioner are not relevant in this context.

21. Having established the fact that the chargesheet/final complaint against the accused Shri. Kitborlang Sumer was filed within the period of 180 days, in fact on the 179th day as found from calculation, therefore, it cannot be said that the charge sheet was filed beyond the mandatory period, which would enable the accused to be entitled to default bail.

22. As regard the entitlement to bail in cases under the NDPS Act 1985, the provision of Section 37 has to be employed for consideration of the same. Section 37 provides 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 27-A 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.”

23. The case of the accused is one where he is charged for contravention of the provisions of Section 8 (c) and has thereby committed an offence punishable under Section 20 (b) (ii) C of the NDPS Act, which basically prohibits transport of any narcotic drugs or psychotropic substance, except for medical or scientific purposes and Section 20 of the said Act prescribes the punishment for contravention in relation to cannabis plant and cannabis which includes transportation of the same and further, which involves commercial quantity amongst others.

24. Section 37 of the NDPS Act as quoted above, would show that it is a provision relating to bail and application for bail by an accused under the NDPS Act. The Apex Court in the case of **State of Kerela v. Rajesh: AIR 2020 SC 721** at paragraph 18 has held as under:

“18. The jurisdiction of the Court to grant bail is circumscribed by the provisions of Section 37 of the NDPS Act. It can be granted in case there are reasonable grounds for believing that accused is not guilty of such offence, and that he is not likely to commit any offence while on bail. It is the mandate of the legislature which is required to be followed. At this juncture, a reference to Section 37 of the Act is apposite. That provision makes the offences under the Act cognizable and non-bailable.....”

Further at paragraphs 20 and 21 of the same, the Apex Court has held as follows:

“20. The Scheme of Section 37 reveals that the exercise of power to grant bail is not only subject to the limitations



contained under Section 439 of the CrPC, but is also subject to the limitation placed by Section 37 which commences with non-obstante clause. The operative part of the said section is in the negative form prescribing the enlargement of bail to any person accused of commission of an offence under the Act, unless twin conditions are satisfied. The first condition is that the prosecution must be given an opportunity to oppose the application; and the second, is that the Court must be satisfied that there are reasonable grounds for believing that he is not guilty of such offence. If either of these two conditions is not satisfied, the ban for granting bail operates.”

21. The expression “reasonable grounds” means something more than prima facie grounds. It contemplates substantial probable causes for believing that the accused is not guilty of the alleged offence. The reasonable belief contemplated in the provision requires existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence. In the case on hand, the High Court seems to have completely overlooked the underlying object of Section 37 that in addition to the limitations provided under the CrPC, or any other law for the time being in force, regulating the grant of bail, its liberal approach in the matter of bail under the NDPS Act is indeed uncalled for.”

25. Applying the principles enunciated in the above case referred to herein ***State of Kerela v. Rajesh (supra)*** to the case in hand, it is amply clear that the facts and circumstances does not favour the accused as far as a reasonable belief that the accused is not guilty of the alleged offence, on the contrary there appears to be prima facie grounds that the accused is not innocent for which he has to prove the same during trial.



26. In view of the above, this Court is of the opinion that the application of the petitioner for grant of bail at this juncture is not called for.

27. Accordingly, this petition is hereby rejected.

28. Registry is directed to return the copy of the final complaint to the respondent/Customs.

29. Application disposed of. No cost.

Judge

Meghalaya
09.07.2020
"N.Swer, Stenographer"

