

**IN THE HIGH COURT OF MANIPUR
AT IMPHAL**

BAIL APPLN. No. 24 of 2023

Bishnu Banik aged about 32 years, S/o (L) Deepak Banik of Muslim Nagar, Moreh Ward No. 5, P.O. & P.S. Moreh, Tengnoupal District, Manipur now under Judicial Custody at Manipur Central Jail, Sajiwa.

.... Petitioner

- Versus -

1. The Officer-in-Charge, Imphal Police Station, P.O. Imphal, Imphal West District, Manipur – 795001.
2. Mr. Subedar Asem Jiten, JC No. 626 of 2nd Mr. Govt. of Manipur, North A.O.C. Imphal, Manipur.

.... Respondents

B E F O R E
HON'BLE MRS. JUSTICE GOLMEI GAIPHULSHILLU

For the petitioner : Mr. Th. Jugindro, Advocate
For the respondents: Mr. Y. Ashang, Public Prosecutor
Date of hearing : 16.08.2024
Date of judgment & order :

JUDGEMENT & ORDER
(CAV)

[1] Heard Mr. Th. Jugindro, learned counsel appearing for the petitioner and Mr. Y. Ashang, learned PP appearing for the respondents.

[2] The present petition has been filed with the following prayer:

- (i) To pass an order for releasing the petitioner on bail in connection with the Spl. Trial (ND & PS) Case No. 03 of 2023 with reference of FIR No. 231 (8) 2022 IPS P.S. U/S. 21 (C) r/w 29(2)(b) & 60(3) of the ND & PS Act, 1985.
- (ii) To pass an interim order to release the petitioner on bail in connection with the Spl. Trial (ND & PS) Case No. 03 of 2023 with reference of FIR 231 (8) 2022 IPS P.S. U/S. 21(C) r/w 29(2)(b) & 60(3) of the ND & PS Act, 1985.
- (iii) To pass any further order or any appropriate/order/direction in the facts and circumstances of the case.

[3] The brief facts of the case are that one Subedar namely, Asem Jiten JC, No. 625 of 2nd MR lodged a complained before the OC/Imphal Police Station whereby mentioning that on 29.08.2022 at around 12:30 p.m. a specific information has been received from their own source regarding consigning of suspected contraband drug at one,

Sanju Bakery at Yaiskul Janmasthan, Imphal West. Based on the complaint, a team of 2nd Bn. MR led by Commandant Smt. Victoria Yengkhom, MPS and Dy. CO 2nd MR, Shri N. Suraj Singh and other personnel along with volunteers of Youth Athletic Development Association (YADA in short) rushed to the spot after informing the SP, Imphal West Control Mike 30 along with along with a team of Imphal Police Station reached at around 02:30 a.m. at the spot. Upon reaching the spot, the petitioner was found in a suspicious manner. The petitioner was searched in presence of a Gazetted officer as desired by the petitioner.

[4] While checking the bakery and upon questioning the petitioner, 2 (two) packets suspected to be Crystal Methamphetamines (also known as Ice Drug) properly wrapped with polythene in 3 (three) layers were seized at 03:30 a.m. along with 1 (one) OPPO A15 mobile handset bearing Airtel Mobile No. 8132980256. The seized articles were sealed and marked as Exhibit – 'A'.

On further checking the place and questioning the petitioner, 3 (three) more packets suspected to be Ice Drug were also seized at 04:30 a.m. properly wrapped with polythene in 3 (three) layers and the same was sealed and marked as Exhibit – 'B'. On weighing the seized suspected Ice Drugs, it was found to weigh about 1 kg each packet approximately including the plastics wraps.

[5] It has been disclosed by the petitioner that the aforementioned suspected Crystal Methamphetamines (Ice Drug) consignment was delivered to him by his partner namely, Karim from Imphal East to be delivered to one, Lala outside the State. Hence, the petitioner was arrested at the spot at 04:40 a.m. along with seized articles in connection with FIR No. 231 (8) 2022 IPS P.S. U/S 21 (C) ND & PS Act, 1985.

In connection with the FIR aforementioned, other 2(two) persons namely, Khulakpam Haffijuddin Shah and Karimuddin were also arrested by the police personnel of Imphal Police Station on 01.09.2022. However, the accused persons were released on bail by the Ld. Special Judge (ND & PS), Manipur.

[6] In connection with the FIR aforementioned, the I.O. of the case had submitted a charge sheet after adding a new Section of 29(2)(b) & 60(3) of the ND & PS Act, 1985 before the Court of Ld. Special Judge (ND & PS), Manipur being under charge sheet No. 15/IMPHAL-PS/2022 on 24.12.2022 against the three accused persons namely, (i) Bishnu Banik, the present petitioner, (ii) Khulakpam Haffijuddin Shah and (iii) Karimuddin. The Ld. Special Judge, ND & PS, Manipur registered as Spl. Trial (ND & PS) Case No. 03 of 2023. The present petitioner was arrayed as the accused No. 1 in the said Special Trial Case No. 03 of 2023 and the present stage of the said trial case is for Charge Hearing.

The petitioner filed a bail application before the Court of Ld. Special Judge (ND & PS), Manipur under Cril Misc. (B) Case No. 58 of 2023 with the prayer for releasing on bail in various grounds. However, the application was rejected vide order dated 25.04.2023 and the same is annexed as Annexure – A/3. The relevant portions of the said order are extracted hereunder:

- "8. *Perused materials on record including the Source Report, documents in c/2 search and seizure of the said suspected Crystal Methamphetamines (Ice drug), Examination Report dated 06/12/2022, wherein the concerned Scientific Officer (Chemistry) of the FSL, Manipur Pangei opined about positive response to the test for methamphetamines, statements of the witnesses, etc., I am of the view that at this stage there exist sufficient basis for proceeding against the accused in respect of the alleged offences. There exists no such facts and circumstances on record that are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offences or no reasonable grounds to believe that the accused is not guilty of the said offences. There is also nothing to show that the accused is not likely to commit any similar offence while on bail.*
9. *In the above circumstances, having regard to all the relevant consideration including seriousness of the alleged offences, I am not inclined to release the accused on bail. Therefore, the application is rejected and stands disposed of."*

[7] Mr. Th. Jugindro, learned counsel appearing for the petitioner submits that the petitioner is absolutely innocent of the charge levelled against the him in connection with the Special Trial Case (NDPS) No. 03 of 2023 with reference to the FIR aforementioned and he never committed any offence as alleged by the prosecution/authority in the said trial case.

The Sanju Bakery, situated at Yaiskul Janmasthan, Imphal West where the alleged contraband items were seized, is owned by one namely, Sasai Ray/Sosai Roy and the said alleged seizure was not made at the instance of the owner of the bakery. In that bakery, the petitioner works as a labourer.

[8] The learned counsel appearing for the petitioner submits that the charge sheet has been submitted after completion of the investigation on 24.12.2022 and registered as Spl. Trial (NDPS) Case No. 03 of 2023. However, the charge was not framed against the petitioner till date.

Even though the charge hearing of the case was fixed on several occasions; the case could not be proceeded due to certain reasons. Since the charge sheet has been filed by the concerned authority, the petitioner is no longer required for the purpose of investigation.

[9] The learned counsel appearing for the petitioner submits that on the said alleged day, there are many labourers working in the said bakery. At the relevant point of time, the team of 2nd MR cordoned the bakery and hot arguments were exchanged between the police team and labourers including the present petitioner. However, the police team arrested the petitioner intentionally without giving any reason by taking advantage of early morning.

The seized suspected contraband articles (Ice Drug) were not seized from the possession of the petitioner and the same is not related with the petitioner. In fact, the arresting authority or complainant did not inform to his superior officer in the written form as to search, seize and arrest the accused person in the connection with the case. The alleged suspected Ice Drugs were seized from the bakery namely, Sanju Bakery where, the petitioner lives along with other labourers. It would not be sufficient to show that the petitioner was in possession with knowledge of its existence. **The prosecution failed to take any action against the other labourers and the owner of the said bakery.** Accordingly, the present petition has been filed with the following grounds:

- (i) The petitioner was arrested on 29.08.2022 and he was produced before the Ld. Special Judge (ND & PS), Manipur on 08.09.2022. He was remanded to judicial custody since 08.09.2022 by an order of the Ld. Special Judge (ND & PS), Manipur.
- (ii) After completion of the investigation, the investigating authority submitted a charge sheet before the Ld. Special Judge (ND & PS), Manipur. The presence of the petitioner is no more required for any further investigation of the case.
- (iii) The said Spl. Trial Case No. 03 of 2023 is not likely to be taken up for further hearing in near future

due to the present situation in the State of Manipur. The said case is likely to take a longtime and it would not be prudent to keep the petitioner behind the bars for an unidentified period of time at this stage. At such situation, the petitioner shall be released on bail.

- (iv) The petitioner is in judicial custody since 08.09.2022 till date. The petitioner has spent considerable time.
- (v) The petitioner is under trial prisoner, he detained in jail to an indefinite period, Article 21 of the Constitution of India is violated. It is submitted that every person, detain or arrest is entitled to get speedy trial. Moreover, the personnel liberty is deprived when bail is refused and also deprived the precious value of the constitutional system under Article 21 of the Constitution.
- (vi) The respondent authority has no useful purpose to serve for detaining the petitioner in jail as the investigating authority already submitted the charge sheet before the Ld. Special Judge (ND & PS), Manipur. There is no likelihood that the petitioner will be absconding away after release on

bail. Moreover, there is no question of hamper or tamper with any prosecution evidence or terrorize the witness after the petitioner was released on bail.

- (vii) The charge sheet has been submitted after completion of the investigation on 24.12.2022, then registered as Spl. Trial (NDPS) Case No. 03 of 2023. However, the charge was not framed against the petitioner till date and the proceedings of the present trial case has been adjourned without framing of charge till date.
- (viii) No prima facie case against the petitioner has been made out.
- (ix) The alleged contraband items were not seized at the instance of the owner of the Sanju bakery namely, Sasai Rai/Sosai Roy. Therefore, there is no reasonable ground for guilty of the petitioner. The search and seizure are also doubtful and as such, the petitioner is entitled to be released on bail.
- (x) The petitioner is innocent and he has nothing to do with the alleged offence in connection with the charge sheet of Spl. Trial (NDPS) Case No. 03 of 2023.

- (xi) The petitioner cooperates with the I.O. of the case since arrest till date.
- (xii) The allegations against the petitioner are that 5 (five) packets of suspected Ice Drugs were seized from the Sanju Bakery at Yaiskul Janmasthan. Such allegation cannot be presumed on its face value and would always remain subject matter at Trial Court during trial.
- (xiii) The prosecution of the arresting authority did not follow the provisions under Section 100(4) of Cr.P.C. at the time of search. Thus, the non-compliance of the provisions, the seizure of the alleged contraband is illegal and the petitioner shall be released on bail.

[10] Mr. Y. Ashang, learned PP submits that affidavit-in-opposition has been filed. In the affidavit-in-opposition, it has been mentioned that after arresting the accused person, petitioner herein, along with seized items which have been handed over to the Officer-in-Charge, Imphal Police Station for taking necessary legal action, investigation was made and examined the complainant who fully corroborated with the OC of the case. On investigation of the present petitioner/accused in connection with the case and from disclosure of the statement of the accused, 2(two) individuals namely, Karimuddin

and his brother Hafijuddin, have been arrested on 01.09.2022 and produced before the Ld. Magistrate and remanded to police custody till 08.09.2022.

During the period of their custody remand, the 3 (three) accused persons including the present petitioner/accused. On interrogation of the present petitioner/accused, he admitted that the suspected Ice Drug was seized from his possession by the police. On further cross interrogation/examination of the three accused persons, **it has been learnt that out of 20(twenty) packets of the suspected Ice Drug received from one unknown person 16.08.2022**, 15(fifteen) packets had been transported from Kiyamgei to Yaiskul Janmasthan to unknown place and the remaining 5 (five) packets was concealed in the safe custody of Karimuddin till the drugs were seized from the possession of Bishnu Banik at Sanju Bakery, Yaiskul Janmasthan on 29.08.2022. Later, the present petitioner/accused was arrested along with the 5 (five) packets of contraband drugs on 29.08.2022.

In the line of investigation, the present petitioner/accused confessed that he had involved in the case and got huge amount of money and divided in between them.

[11] In this regard, the learned PP referred to the decision of Hon'ble Supreme Court's decision passed in ***Union of India V. Rattan Mallik @ Habul*** reported in ***(2009) 2 SCC 624*** and the relevant portions are extracted hereunder:

"11. Section 37 of the NDPS Act, as substituted by Act 2 of 1989 with effect from 29-5-1989 with further amendment by Act 9 of 2001 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 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 another law for the time being in force on granting of bail."

12. It is plain from a bare reading of the non obstante clause in Section d 37 of the NDPS Act and sub-section (2) thereof that the power to grant bail to a person accused of having committed offence under the NDPS Act is not only subject to the limitations imposed under Section 439 of the Code of Criminal Procedure, 1973, it is also subject to the restrictions placed by clause (b) of sub-section (1) of Section 37 of the NDPS Act. Apart from giving an opportunity to the Public Prosecutor to oppose the application for e such release, the other twin conditions viz. (i) the satisfaction of the court that there are reasonable grounds for believing that the accused is not guilty of the alleged offence; and (ii) that he is not likely to commit any offence while on bail, have to be satisfied. It is manifest that the conditions are cumulative and not alternative. The satisfaction contemplated regarding the accused being not guilty, has to be based on "reasonable grounds".

13. The expression "reasonable grounds" has not been defined in the said Act but means something more than prima facie grounds. It connotes substantial probable causes for believing that the accused is not guilty of the offence he is charged with. The reasonable belief contemplated in turn, points to existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence (vide *g Union of India v. Shiv Shanker Kesari*²). Thus, recording of satisfaction on both the aspects, noted above, is sine qua non for granting of bail under the NDPS Act.

14. We may, however, hasten to add that while considering an application for bail with reference to Section 37 of the NDPS Act, the court is not called upon to record a finding of "not guilty". At this stage, it is neither necessary nor desirable to weigh the evidence meticulously to arrive at a positive a finding as to whether or not the accused has committed offence under the NDPS Act. What is to be seen is whether there is reasonable ground for believing that the accused is not guilty of the offence(s) he is charged with and further that he is not likely to commit an offence under the said Act while on bail. The satisfaction of the court about the existence of the said twin conditions is for a limited purpose and is confined to the question of releasing the accused on bail.

15. Bearing in mind the above broad principles, we may now consider the merits of the present appeal. It is evident from the afore-extracted paragraph that the circumstances which have weighed with the learned Judge to conclude that it was a fit case for grant of bail are: (1) that nothing has been found from the possession of the respondent; (ii) he is in jail for the last three years, and (iii) that there is no chance of his appeal being heard within a period of seven years. In our opinion, the stated circumstances may be relevant for grant of bail in matters arising out of conviction under the Penal Code, 1860, etc. but are not sufficient to satisfy the mandatory requirements as stipulated in clause (b) of sub-section (1) of Section 37 of the NDPS Act.

16. Merely because, according to the learned Judge, nothing was found from the possession of the respondent, it could not be said at this stage that the respondent was not guilty of the offences for which he had been charged and convicted. We find no substance in the argument of learned counsel for the respondent that the observation of the learned Judge to the effect that "nothing has been found from his possession" by itself shows application of mind by the learned Judge tantamounting to "satisfaction" within the meaning of the said provision. It seems that the provisions of the NDPS Act and

more particularly Section 37 were not brought to the notice of the learned Judge."

In ***Union of India V. Niyazuddin SK & Anr.*** reported in

(2018) 13 SCC 738, the Hon'ble Supreme Court held that -

"6. Section 37 of the NDPS Act contains special provisions with regard to grant of bail in respect of certain offences enumerated under the said section. They are –

- (1) In the case of a person accused of an offence punishable under Section 19,*
- (2) Under Section 34,*
- (3) Under Section 27-A and*
- (4) Of offences involving commercial quantity."*

[12] No rejoinder affidavit has been filed on the part of the learned counsel appearing for the petitioner.

Mr. Th. Jugindro, learned counsel appearing for the petitioner referred to the decision of Hon'ble Supreme Court passed in ***Dipak Shubhashchandra Mehta V. Central Bureau of Investigation & Anr.*** reported in ***(2012) 4 SCC 134***. The relevant portions of the judgment are extracted herein below:

"33. Considering the present scenario and that there is no possibility of commencement of trial in the near future and also of the fact that the appellant is in custody from 31-3-2010, except the period of interim bail i.e. from 15-9-1022 to 30-11-2011, we hold that it is not a fit case to fix any outer limit taking note of the materials collected by the prosecution. This Court has repeatedly held that when the undertrial prisons are detained in jail custody to an indefinite period, Article 21 of the Constitution is violated.

34. As posed in Sanjay Chandra case we are also asking the same question, i.e. whether the speedy trial is possible in the present case for the reasons mentioned above."

In ***Mohd Muslim @ Hussain V. State (NCT of Delhi)*** ***[2023 LiveLaw (SC) 260]***, the Hon'ble Supreme Court held that-

"7. Aggrieved, the present appellant approached the High Court. The impugned judgment records that the present accused was prima facie in regular contact with other co-

accused as indicated by the call records, and that the main accused Virender Singh @ Beerey had transferred money from his bank account to the appellant's bank account, several times. One of the witnesses, during trial, had also allegedly mentioned that Rs. 50,000 was received from the present appellant. It was held that there was a prima facie case against him, and no grounds to rely on the exceptions of Section 37 of the NDPS Act; therefore, application for regular bail was refused, with a direction to the trial court to expedite the trial and conclude it within six months. Aggrieved, the appellant is now before this Court, renewing his plea for grant of regular bail.

8. *Ms. Tanya Agarwal, learned counsel appearing on behalf of the appellant, urged that the period of long incarceration suffered, entitled the appellant to grant of bail. Further, 34 more witnesses were yet to be examined, with little or no progress to the trial since the High Court's direction to expedite the trial. It was also pointed out that main accused Virender Singh @ Beerey and another co-accused Nepal Yadav, had both already been granted bail by the High Court. Counsel urged bail on the ground of parity."*

16. *In the most recent decision, Satender Kumar Antil V. Central Bureau of Investigation, prolonged incarceration and inordinate delay engaged the attention of the court, which considered the correct approach towards bail, with respect to several enactments, including Section 37 NDPS Act. The court expressed the opinion that Section 436A (which requires inter alia the accused to be enlarged on bail if the trial is not concluded within specified periods) of the Criminal Procedure Code, 1973, would apply:*

"We do not wish to deal with individual enactments as each special Act has got an objective behind it, followed by the rigour imposed. The general principle governing delay would apply to these categories also. To make it clear, the provision contained in Section 436-A of the Code would apply to the Special Acts also in the absence of any specific provision. For example, the rigour as provided under Section 37 of the NDPS Act would not come in the way in such a case as we are dealing with the liberty of a person. We do feel that more the rigour, the quicker the adjudication ought to be. After all, in these types of cases number of witnesses would be very less and there may not be any justification for prolonging the trial. Perhaps there is a need to comply with the directions of this Court to expedite the process and also a stricter compliance of Section 309 of the Code."

In ***Dinesh Kumar Sinha V. State of Jharkhand through CBI*** reported in ***(2009) 6 SCC 628***, the Hon'ble Supreme Court held that-

"3. *It is submitted that the appellant has already undergone nearly two years of his sentence and also there is no possibility of early hearing of the appeal in the High Court, therefore, it is requested that the appellant may be released on bail. The learned counsel for the respondent State opposes the request made by the learned counsel for the appellant.*

4. *Since the appellant has undergone almost two years of imprisonment as awarded by the trial court and also taking into account the fact that the appeal may not be heard in the near future, we are of the opinion that in the peculiar facts and circumstances of this case, the appellant applicant should be released on bail.*

5. *Accordingly, we grant interim bail to the appellant, subject to the appellant furnishing the bail bond as well as surety to the satisfaction of the Special Judge, CBI, Ranchi.*

6. *The appeal is disposed of accordingly."*

In ***Sanjay Chandra V. Central Bureau of Investigation*** reported in ***(2012) 1 SCC 40***, the Hon'ble Supreme Court held that –

"42. *When the undertrial prisoners are detained in jail custody to an indefinite period, Article 21 of the Constitution is violated. Every person, detained or arrested, is entitled to speedy trial, the question is : whether the same is possible in the present case."*

[13] It is admitted position of fact that

(i) The petitioner/accused was arrested on 29.08.2022.

(ii) The petitioner/accused was remanded to judicial custody on 08.09.2022 and since the said remand the accused is incarcerated in jail till now.

- (iii) The investigating authority after completion of the investigation submitted charge sheet before the Ld. Special Judge (ND & PS), Manipur against the present petitioner/accused along with 2 (two) others and registered the case as Special Trial Case No. 3 of 2023.
- (iv) The investigating authority, after checking and upon questioning the petitioner/accused, made seizure of the contraband seized articles weighing about 5 kg.

[14] The petitioner filed the bail application for releasing him on bail before the Ld. Special Judge (ND & PS), Manipur. However, the Ld. Special Judge (ND & PS), Manipur rejected the bail application on the ground as extracted (supra).

[15] On perusal of the materials placed before this Court including the petition, counter affidavit, it is seen that the seized contraband articles were part of the consignment made between the three accused involved in the present case and some unknown persons i.e. altogether 20 (twenty) packets; out of that, 5 (five) were seized in connection with the present case. But, 15 (fifteen) packets had already been transported to some other places.

[16] In the decision of Hon'ble Supreme Court passed in ***Union of India vs. Rattan Mallik @ Habul*** reported in ***(2009)2 SCC 624***

(supra), the relevant portion of which are extracted herein above. As observed by the Hon'ble Supreme Court at Para No. 11, 12, 13, 14 & 15 along with combined reading of Section 37 of the ND & PS Act, as extracted above, the observation made therein in the extracted paras and Section 37 of the ND & PS Act are applicable in the facts and circumstances of the present case as the facts set out by the prosecution shows reasonable ground for believing that the accused is guilty of the offences alleged against him and also considering the fact that the seized contraband articles are a part of the consignment made between the three accused involved in the present case with other persons amounting to 20 (twenty) packets. Considering the seriousness of the case, the non-obstante clause in Section 37 of the ND & PS Act and sub-Section 2 thereof is applicable in the present case.

[17] On the other hand, the grounds taken herein by the petitioner could not satisfy the Court that there are reasonable grounds for believing that the accused is not guilty of the alleged offence and that he is not likely to commit any offence while on bail.

[18] Considering the facts of the case as set out above, it is seen and evident as of now that the transaction was made between the present accused consignment of the seized contraband articles were; out of 20 packets, 15 were delivered to the present accused earlier and the same was transported and delivered to unknown person and the remaining 5 packets i.e. the present seized articles were seized in the

custody of the present accused. The present seized contraband articles i.e. 5 packets are part of the said 20 packets of consignment. On top of that, the present bail application was filed on 11.09.2023, and at the time of filing of the present bail application, the charge sheet was already filed and process was issued. However, both the learned counsels for the parties failed to update the stages of the trial till now.

[19] In the facts and circumstance of the case in hand, the citations relied upon by the learned counsel for the petitioner are not applicable.

[20] Taking into account the facts and circumstances as narrated above and also taking into consideration all the discussions made above, the present petition filed by the accused/petitioner has got no leg to stand upon.

[21] Accordingly, the present petition is dismissed without cost, as this Court felt that, the quicker adjudication ought to be made by the parties as well as the Trial Court as such directed the Trial Court not to prolong the trial and to expedite the process of the trial with strict compliance as per the provision of law and that the trial may be proceeded as fast as possible. Liberty is given to the petitioner to approach this Court, if the Trial Court failed to proceed with the trial of the case in time for bail.

JUDGE

Bipin