

**(1994) 03 GAU CK 0013**

**In the Gauhati High Court**

**Case No :** Criminal Miscellaneous Criminal Application No. 20 of 1994

Heikrujam Dhananjay Singh and Heikrujam Sarat Singh

APPELLANT

Vs

The State of Manipur

RESPONDENT

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**Date of Decision :** 18-03-1994

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 167(2), 439  
Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 21, 37,  
37(1), 37(2)

**Citation :** (1994) 2 GLR 288

**Hon'ble Judges :** J. Sangma, J

**Bench :** Single Bench

**Advocate :** I. Lalitkumar and S. Jeeten, for the Appellant; A. Jagatchandra Singh, Assistant Public Prosecutor, for the Respondent

**Final Decision :** Allowed

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## **Judgement**

J. Sangma, J.—In BAPS FIR Case No. 14(1) 94 u/s 21 NDPS Act, for (short "the Act", the police arrested accused Heikrujam Dhananjay Singh on 20.1.94. The prosecution case is that at 10.30 a.m. of 20.1.94 the police of BAPS detected and seized one paper packet of No. 4 heroin from his possession. The weight together with the weight of paper packet was 500 mgs. The case was registered on 20.1.94. The sample had been sent for chemical examination. According to I/O's report dated 26.2.94, investigation is complete and there are materials against the accused; but report from chemical examiner was awaited for filing the charge sheet. A petition was moved for bail; as the Addl. P.P, objected, the Judge, Special Court No. II, Manipur, refused the bail on 2.3.94. Hence this petition before this Court u/s 439 Code of Criminal Procedure, hereinafter "the Code", for bail.

2. Mr. Lalitkumar submitted that even on the showing of prosecution the investigation is over and the I/O was only waiting for the report from chemical examiner for filing the charge sheet. The accused is a local man and serving as

Rifle Man in Manipur Rifles. Relying on my order dated 24.9.1993 in CRIL. MISC. (BAIL) APPLICATION NO. 36/93 Mrs. Kheirun Bibi v. State of Manipur the learned Counsel submitted that the accused by now has deserved to get the bail.

3. Mr. Jagatchandra, the learned P.P. opposed the petition, submitting that in view of the decision in Narcotics Control Bureau Vs. Kishan Lal and others, no bail can be granted to the accused as the I/O has obtained materials to prosecute him u/s 21 of the Act. In that case bail for two accused was prayed before the High Court of Delhi on the ground that the accused were entitled to be released on bail as required u/s 167(2) of the Code, as the charge sheet was filed at a belated stage, and secondly on the ground of illness. The High Court granted bail, on holding that I imitation placed on the Special Court u/s 37(2) of the Act can not be read as fetters on the High Court in exercise of the power u/s 439 of the Code. But the Supreme Court (1991 SC 558) reversed this view and held that the powers of the High Court to grant bail u/s 439 are subject to the limitations contained in the amended section 37 of the NDPS Act and the restrictions placed on the powers of the Court under the said section are applicable to the High Court also in the matter of granting bail, But the Supreme Court, however, did not cancel the bail of the two accused Respondents as they have been on bail for a long time, pursuant to the order of the Delhi High Court. The relevant part of section 37 of the Act is Sub-section (1)(b) which provides as follows:

(b) no person accused of an offence punishable for a term of imprisonment of live years or more under this Act shall be released on bail or on his own bonds 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.

4. In view of the above decision of the Supreme Court a Division Bench of this Court also held, in Shankar Singh v. the State of Assam (1993) GLR 379, that the provision in Clause (b) to Sub-section (1) of Section 37 of the Act overrides the provision in proviso (a) to Section 167(2) of the Code; so no person arrested in connection with any offence under the Act has a right to be released on default or on the technical grounds under proviso (b) to Section 167(2) of the Code. At Para-17 of the judgment the Division Bench said thus:

The object of the Act, inter alia, is to make stringent provisions for the control and regulation of operations relating to narcotic drugs and psychotropic substances. The Act provides for deterrent punishments for various offences. The Act as it originally stood did not contain any provision indicating whether the offences under the Act are bailable or non bailable. Therefore, bailability or non-bailability had to be decided in the light of Part-II of the First Schedule to the

Code, according to which, offences punishable with death, imprisonment for life, or imprisonment for three years and upwards are non bailable and offences punishable with imprisonment for less than three years or with fine only are bailable. Viewed in this light the major offences under the Act are non bailable.

5. So the effect of the above decision of the Supreme Court and this Court is that in major offences under the Act, i.e., in the offences in which the quantity of narcotic is big, bail can not at all be granted where there are materials against the accused and the P.P. opposes to the grant of bail. In such a case the only remedy is, after the charge sheet is filed the trial Court should expeditiously try and dispose of the case, But the present is not a major offence because the narcotic which is said to be No. 4 heroin together with the paper packet weighed only 500 mgs which is worth only Rs. 100/- as admitted. The accused is local man and a personnel of the Manipur Rifles. It is not the prosecution case that if bail is granted he would abscond or would be able to tamper with the evidence at the trial. I am therefore of the view that bail can by now be granted to the accused.

6. Accordingly, the application is allowed and the accused Heikrujam Dhanan-joy Singh, is now allowed to be released on bail of Rs. 10,000/- to the satisfaction of the Special Judge. The bail bond will be furnished by two local persons.