

(1993) 09 GAU CK 0013

In the Gauhati High Court

Case No : Cril. Miscellaneous (Bail) Application No. 36/93

Kheirun Bibi

APPELLANT

Vs

State of Manipur

RESPONDENT

Date of Decision : 24-09-1993

Acts Referred:

Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) — Section 21, 37, 37(1)
Penal Code, 1860 (IPC) — Section 302

Citation : (1994) 1 GLR 295

Hon'ble Judges : J. Sangma, J

Bench : Single Bench

Advocate : Ch. Dhananjay Singh, for the Appellant; Jagat Chandra, Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

1. Sangma, J.—Mrs. Kheirun Bibi, the Petitioner, has made this petition for grant of bail to her husband, Md. Satter Shah @ Khuraton, who as an accused in Imphal PS Case No. FIR 273 (6)/93 u/s 21 NDPS Act, in jail's hazot since his arrest on 6.6.93.

2. Prosecution case against him is that the police recovered and seized 35 grams of heroin powder from the quarter of the Chowkidar of Minor Irrigation Office, Imphal, which was being occupied by the accused though was not chowkidar. He denies the case against him.

3. Mr. Dhananjay Singh, learned Counsel for the accused stated that the accused is a poor local Manipuri Muslim aged 50 years and he has been living with his family only at Imphal for years and submitted that if he is released on bail there is no possibility that at this age he would abscond or would be able to hinder police investigation. He submitted that since the accused has been kept in hazot from 6.6.93 this is now a fit case for bail. Mr. Jagat Chandra, learned PP, produced a case diary and stated that the I/O has found sufficient materials to prosecute the accused and by now he has almost completed the investigation. As

the I.O. found materials he has objected to the grant of bail.

4. The accused is a poor and ageing local man and there is no denial Unit if bail is granted there is no likelihood that he would abscond or would be able to obstruct the investigation in any manner and, on PP's own showing the I.O. has already got sufficient materials to submit the charge sheet and the investigation has also reached almost the stage of closing. This being the position, I am now inclined to grant the bail.

5. Mr. Jagat Chandra then said that in view of the bar in Section 37 bail cannot be granted because materials have been found against the accused. Section 37 says as follows:

37. Offence 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 a term of imprisonment of five years or more under this Act 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 prosecution (sic) 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 limitation on granting bail specified in Clause (b) of Sub-section (1) are in addition to the limitations under the Code of criminal procedure, 1973, or any other law for the time being in force on granting of bail.

6. The objection is based on clause (b)(ii). I have given much thought to this. In my view the words "he is not guilty of such offence" should have been omitted. A bail is to be granted to an accused who would have to stand the trial. If the I/O or the Court before which the application for bail is made believes that the accused is not guilty of such offence he would not have to stand the trial. The main purpose of detention in custody is to prevent the accused from contacting witnesses and making seizures of relevant articles during investigation and thereby causing obstruction or hindrance to the process of investigation. As the stage for such fear is over, I see no reason why bail should not be granted. In fact, in practice bails are granted by court even to accused who is charged u/s 302 IPC for murder. Nothing has been shown to the effect that the accused in this case would commit another offence after going on bail. I am, therefore, clearly of the view that Section 37 should not be interpreted as an absolute and total bar to the grant of bail and therefore a Court can grant bail depending on the facts and circumstances of the case to an accused against whom materials have been obtained to put him up for trial.

7. In the view I have taken I find that the present is a case where bail should be granted to the accused named above. Accordingly, this petition is allowed and the accused is directed to be released on bail of Rs. 5000/- to the satisfaction of the court or any authority concerned.