

(2019) 09 MAN CK 0014

In the Manipur High Court

Case No : Bail Application No. 9 Of 2019

Muminur Rahaman Barbhuya

APPELLANT

Vs

State Of Manipur And Others

RESPONDENT

Date of Decision : 17-09-2019

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 167(2), 173(2), 173(2)(d)
Narcotic Drugs And Psychotropic Substances Act, 1985 — Section 21(b), 22C, 25, 29, 36A(4), 37, 60(3), 62

Citation : (2019) 09 MAN CK 0014

Hon'ble Judges : M.V. Muralidaran, J

Bench : Single Bench

Advocate : M. Hemchandra, Juno Rahaman, Y. Ashang

Final Decision : Allowed

Judgement

M.V. Muralidaran, J

BRIEF CASE OF THE PETITIONER/ACCUSED

The petitioner/accused was arrested in the formal arrest under FIR No. 30(4)2018 NAB PS U/s 22© /62/60(3)/25/29/21(b) ND & PS Act (as amended on 15.09.2018 and has been under Judicial custody for the last 7/8 months i.e. 240 days in jail.

2. That on 10th April 2018 at about 11.30 am, 23rd Assam Rifles, Kamei post received specific information from their Battalion Headquarter that a cruiser vehicle bearing regd. AS 11AC6710 which was moving from Imphal to Silchar was carrying illegal drugs. Accordingly AR mobile vehicle post started checking all the vehicles going to Silchar. At around 13:15 hours of the day, the cruiser vehicle bearing regd. No. AS11AC6710 arrived at their location. Then, in the presence of the witnesses, the complainant started checking the said vehicle being driven by Mr.Manzil Ahmed lasker of Uttar Lalpani Sub Divn. Lakhipur P.O. & P.S. Jirighat, District Cachar, Assam. At 17:00 hrs, the complainant found a

long handmade arrangement inserted inside the modified chasis of the vehicle and found 50 plastic packets wrapped with yellow cello tap.

On opening the packets 10 blue colour smaller packets containing 200 pieces of pink round tablets as "WY" in each of them were found i.e. altogether $50 \times 10 \times 200 = 1,00,000$ tablets which weighed. On weighing altogether 11.34 kgs including the weight of those blue plastic packets. Hence, one case was registered at NAB-PS under this above FIR case and the petitioner was arrested and had been under the Judicial Custody till date for more than 240 days thereby violated the provisions under section 167(2) Cr.P.C.

3. The petitioner/accused is quite innocent of the charges leveled against him and he has been falsely implicated in this case and nothing recovered from his possession any illegal drugs at the time of arrest. Hence this bail petition is filed.

Objections raised by the respondents No. 2 & 3

4. A case numbered NCB Crime No.06/04/NCB/Imp/ NDPS/C1/2018 dated 05.04.2018 has been registered against them. After completing and following the mandatory provisions of the law and the rules framed therein and considering the necessity for timber investigation into the crime committed and also for taking up necessary action and processed for conducting chemical examination of the seized items by the expert namely the Chemical Examiner, Forensic Sciences Laboratory, Assam, the Petitioner and the two other accused were produced before the Learned Chief Judicial Magistrate, Imphal West, Manipur on 05.04.2018 and the Learned Chief Judicial Magistrate, Imphal West after proper examination of the materials and records was pleased to remand the petitioner and the other two accused to judicial custody for a period of fifteen days till 19.4.2018.

5. The petitioner had earlier filed a bail application before the Learned Special Court (ND & PS) Imphal but the Learned Court in its wisdom had rejected the same mainly on default of the Petitioner's conducting counsel at the time of hearing in 02 to 03 occasions.

6. The Narcotics Control Bureau, Imphal Sub Zone personnel had violated the formalities to be observed under the ND & PS Act 1985, as amended at the time of the arrest of the Petitioner. The Hon'ble Court that he is not guilty of such offence and that he is not likely to commit any offence while on bail as provided as provided in Section 37 of the ND & PS Act 1985 as amended.

7. The accused No.4 namely Mr.Golam Wazid Barbhuiya @ Tinku Barbhuiya who is also involved in the same crime is now absconding and that a warrant of arrest has also been issued against him by the Learned Special Court (ND & PS) Lamphelpat, Imphal also passed an order dated 10.6.2019 to provide legal counsel to the petitioner and the two other accused as Shri R.K.Suresh Singh, Advocate had submitted before the Learned Special Court (ND & PS) Lamphelpat, Imphal that he was not formally engaged by the petitioner and the two other

accused.

8. The petitioner is a popular person and is well experienced and has efficient skills in the illegal business of banned narcotic drugs and psychotropic substances mainly within the North East states to the extent of reaching Maharashtra and also Bangladesh. If the accused is released on bail, there is serious apprehensions and also the likelihood of repeating crimes in future.

9. I have given my careful consideration to the respective submission made by the learned counsel for both parties.

10. In the case on hand, the petitioner/accused and 2 others were produced before the Learned Chief Judicial Magistrate on 05.04.2018 and remanded to judicial custody on 06.04.2018. It is the case of the petitioner/accused that he was travelling in the NH 53 for Silchar in connection with business trip and he was arrested and in judicial custody for more than 300 days and thereby the respondent violated the provisions under section 167 (2) Cr.P.C.

11. Further the respondent police filed the final complaint on 29.09.2018 and cognizance was taken by the Special Court on 26.11.2018. Therefore the remand extension was not supported by the report of the Special Public Prosecutor and the learned the trial court mechanically extended the remand after the expiry of 180 days.

12. In 'Gurpal Singh and another v. State of Punjab', decided on 23.4.2016, where the Hon'ble High Court of Punjab observed as follows:

"Following the judgment of Apex Court in Satya Narain Musadi's case (supra) which has been followed by the High Court of Andhra Pradesh in Matchumari China's case (supra), and by Calcutta High Court in Raghubirsaran Jain and another Vs. State and another, 1995 CrLJ 4117, I am of the considered opinion that the petitioners herein 1 of 4 should have been released, in peculiar circumstances of this case, as indefeasible right had accrued to them under Section 167 (2) Cr.P.C. On presentation of incomplete challan without the report of chemical examiner and the prosecution agency having not availed the benefit of Section 36 A (4) of the NDPS Act within a period of 180 days. In a case under the NDPS Act, a right of bail under Section 167 (2) Cr.P.C. of an accused can be defeated by the prosecution agency by availing the remedy under Section 36 A (4) of the NDPS Act subject to the fulfilment of the statutory requirement of Section 36 A (4) of the NDPS Act which is to be considered in each case on individual merits by the concerned trial Court/ Special Judge. The right under Section 167(2) Cr.P.C. cannot be defeated by merely filing an incomplete challan. It is pertinent to observe here that all observations made in this judgment are in context to the offences under the NDPS Act.

It is not out of place to observe here that the judgment of Narendra Kumar Amin's case (supra) relied upon by the trial Court is not applicable to the facts of the present case. In Narendra Kumar Amin's case (supra), default bail under

Section 167 (2) Cr.P.C. had been declined by the CBI Court as well as by the Gujarat High Court, as the challan had been presented on the last date of expiry of 90 days. In the said case, the prosecution had sought extension of detention for custody prior to the expiry of 90 days and period of remand had been extended beyond the period of 90 days. In the said case, the period of remand was extended till July 5, 2013 and the challan had been presented on July 3, 2013. The Apex Court had held that filing of the police report as required under Section 173 (2) Cr.P.C. was within the period of 90 days. So far as the material which forms part of the report under Section 173 (2) Cr.P.C. is concerned, the High Court had observed in para 10.1 of its judgment that the contents of the charge sheet set in its prefatory details, showed the revelations in the investigation. The Investigating Officer mentioned the role played by the accused persons and he opined on the basis of the material collected by him during the investigation that the prima-facie commission of offence in his view was made out. The High Court had observed that it was evidently clear that the charge sheet as presented, incorporated all the necessary details required under Section 173 (2) including that whether offence was committed and by whom, which was in terms of clause (d) of Section 173 (2)."

13. Learned State counsel is unable to deny that prosecution did not file an application under section 36A (4) NDPS Act praying for extension of time to await the FSL report and the judgments cited by him do not touch this point.

14. The factual position is that, an incomplete challan was filed which flaw is incurable in view of law in Gurpal Singh's case (supra) and other cases.

15. FSL report is available after the period of 180 days fixed by the legislature in the Act. Therefore, keeping in view the facts and circumstances of the present case, and without expressing any opinion on the merits of the case, I have no Option but to allow this petition and the petitioner is ordered to be released on bail, subject to the satisfaction of the concerned trial Court.

16. In the result,

a) this bail petition is allowed

b) the petitioner is released on bail by directing the petitioner to execute two sureties like sum of Rs. 1,00,000/- each to the satisfaction of the Learned Special Judge, NDPS Act, Lamphelpat, Imphal.

c) the petitioner is directed to report before the Learned Special Judge, NDPS, Lamphelpat daily at 10' o clock until further orders.