

(2013) 10 MAN CK 0002

In the Manipur High Court

Case No : Criminal Revision Petition No. 14 of 2013

The State of Manipur and Another

APPELLANT

Vs

Ngairangbam Brojendro Singh

RESPONDENT

Date of Decision : 03-10-2013

Acts Referred:

Citation : (2013) 10 MAN CK 0002

Hon'ble Judges : N. Kotiswar Singh, J

Bench : Single Bench

Advocate : R.S. Reisang and P.P. Shyam Sharma, Jr. G.A, for the Appellant; N. Ibotombi A. Rommel and W. Darakishwor, for the Respondent

Judgement

N. Kotiswar Singh, J.—Considering the commonality of the facts and laws involved, and hence the issues, the present revision petitions, which are directed against the grant of bail by the Special Court (NDPS), Manipur, are heard together and disposed of by this common judgment and order. It is the case of the State that on 24.2.2013 at about 7 a.m. on receipt of certain reliable information that some vehicles plying along the National Highway 102 from Imphal to Moreh were carrying illegal drugs to be transported to Myanmar via Pallel, a mobile check post was set up for frisking and checking of suspect vehicles on the road. At around 7.30 a.m., one white Bolero B/R No. ASO1BA-8699 with a sticker "ARMY" written and pasted on the front glass of the vehicle was stopped for frisking near the Pallel Police Station New Building Gate. On conducting search of the vehicle in presence of one Gazetted Officer along with two civilian independent witnesses, as many as 8 packets containing thousands of strips of pseudoephedrine tablets were found inside the vehicle, valued about Rs. 6(six) crores. Accordingly, the said tablets were seized in presence of witnesses by observing necessary formalities. The driver of the vehicle, namely, Lunkhohao Haokip and another person accompanying him, Zangminthang Tuboi, were arrested on the spot.

The said seized illegal drugs were stated to have been handed over to them by

one Rishi of Khagempalli Thangjambon along with the said Bolero vehicle at Deulahland, Imphal in the house of one Seikholen Haokip s/o Telsing Ngamjang Haokip for handing over those articles to one Momo Zou of Moreh Ward No. 6 for transportation to Myanmar. In connection with this incident, an FIR case was registered at Kakching Police Station being FIR No. 27(2)2013- Kcg-PS u/s. 21 /29 ND & PS Act.

The said two persons, Lunkhohao Haokip (Respondent in CrI. Revn. Petition No. 17 of 2013) and Zangminthang Tuboi (Respondent in CrI. Revn. Petition No. 19 of 2013) were also found to be involved in two other cases, viz., FIR No. 26(2)2013-KCG-PS and FIR No. 28(2)2013-KCG-PS and were arrested in the said FIR cases also.

2. The said two FIRs were registered on the same day after two more vehicles were seized one after another around the same place which were also carrying pseudoephedrine tablets of very large quantities.

In respect of FIR No. 26(2)2013-KCG-PS, the offending vehicle was one Bolero vehicle bearing false registration No. MN 04A-6968 with similar sticker "ARMY" with flag post and red light with the additional sticker of "PRO IMPHAL" which was driven by Colonel Ajay Chowdhury (Respondent in Cri. Revision Petition No. 15 of 2013) and accompanied by Ngairangbam Brojendro Singh (Respondent in Oil. Revision Petition No. 14 of 2013) which were also carrying pseudoephedrine tablets of large quantity in 9 packets of value of crores of rupees. Both of them were arrested in connection with the aforesaid FIR No. 26(2)2013-KCG-PS.

Similarly, in FIR No. 28(2)2013-KCG-PS, the offending vehicle was one Tata Safari bearing registration No. MN02A-0369 with a similar sticker "ARMY" driven by Letminlal Haokip (Respondent in Cril. Revision Petition No. 20 of 2013) and accompanied by R.K. Babloo Singh (Respondent in Cri. Revision Petition No. 16 of 2013) which was also carrying pseudoephedrine tablets of large quantity in 14 packets worth crores of rupees. Both of them were arrested in connection with the aforesaid FIR No. 28(2)2013-KCG-PS on the same day.

3. According to the State, in course of the investigation of the case under FIR No. 27(2)2013-KCG-PS and as per the disclosure of the accused respondents, a search was conducted in the evening of 25.2.2013 in the out-house of Seikholen Haokip s/o T.N. Haokip of B. Vengnon, Tuibong Churachandpur at present at Deulahland 5th Avenue, Imphal (the respondent in Cril. Revision Petn. No. 18 of 2013) and recovered 4(four) numbers of thermocold boxes containing 2316 Nos. of Ketamin Hydrochloride Injections LP. Ektamin 500 mg. which is a psychotropic substance and said Seikholen Haokip was arrested on the same day in connection with FIR No. 27(2)2013-KCG-PS. On his interrogation, the said Seikholen Haokip had admitted to have concealed the aforesaid illegal drugs in his out house in collusion with his associates, the above named other respondents for transportation upto Moreh and thereafter to foreign countries through them. According to the prosecution, the investigation has revealed that a

criminal conspiracy was hatched by the accused persons, Lunkhohao Haokip, Zangminthang Tuboi and Seikholen Haokip along with the aforesaid (1) Colonel Ajay Chowdhury, (2) Ngairangbam Brojendro Singh, Assistant Manager, Customer Services of Indigo Airlines, Imphal, who are accused in FIR No. 26(2)2013-KCG-PS, (3) Letminlal Haokip s/o (L) Kakai Haokip of New Checkon near Brighter School, (4) R.K. Babloo Singh s/o R.K. Bijen of Top Khongnagkhong, Porompat D.C. Road, who are accused in FIR No. 28(2) 2013-KCG-PS.

4. It is the case of the State that a criminal conspiracy was hatched by the accused persons namely Lunkhohao Haokip, Zangminthang Tuboi and Seikholen Haokip along with the 4 (four) above mentioned accused to commit the crime of transporting illicit drugs to Moreh and foreign countries. As per the State, since the official Gypsy of Colonel Ajay Chowdhury was under repair, the accused Lunkhohao Haokip hired the Bolero vehicle bearing Regd. No. MN04A-6968 (the registration plate of which was replaced by a fake regd. No. MN04A 8390 and seized in c/w FIR No. 26(02)2013 Keg P.S.) from its owner Lunkim Hojlhomang Khongsai alias Mamang Khonsai of Deulahland on 22/2/2013 and it was handed over to Colonel Ajay Chowdhury at M-Sector, Imphal. As per direction of Colonel Ajay Chowdhury, R.K. Babloo Singh got the number plate changed and fixed the name plate with "PRO IMPHAL" and "Govt. of India, Ministry of Defence" written on it and put the flag post and red beacon light on the vehicles.

The prosecution also alleged that the accused persons namely, Colonel Ajay Chowdhury, Ngairangbam Brojendro Singh and Lunkhohao Haokip alias Haopu Haokip had successfully transported huge quantity of illicit drugs from M-Section Imphal to Moreh in the 1st week of December, 2012 by using the official Gypsy of Colonel Ajay Chowdhury and the Bolero B/R No. AS01BA-8699.

5. All the accused persons moved applications for release on bail u/s 37 of the NDPS Act read with Section 439 Cr.P.C. before the learned Judge, Special Court (NDPS), Manipur which were registered as Cril. Misc. (B) No. 88-A of 2013, Cril. Misc. (B) No. 89-B of 2013, Cril. Misc. (B) No. 90-A of 2013, Cril. Misc. (B) No. 91-A of 2013, Cril. Misc. (B) No. 18 of 2013, Cril. Misc. (B) No. 117 of 2013 and Cril. Misc. (B) No. 120 of 2013. All the accused persons have pleaded innocence. The learned Judge, Special Court (NDPS), Manipur vide common order dated 12.7.2013 passed in Cril. Misc. (B) Case No. 88-A of 2013, Cril. Misc. (B) Case No. 89-B of 2013, Cril. Misc. (B) Case No. 90-A of 2013, Cril. Misc. (B) Case No. 91-A of 2013, and 17.7.2013 passed in Cril. Misc. (B) Case No. 18 of 2013, Cril. Misc. (B) Case No. 117 of 2013 and Cril. Misc. (B) Case No. 120 of 2013 allowed the bail applications for releasing the accused persons on bail.

6. While allowing the bail applications, the learned Judge made the following observations which formed the basis for allowing the bail applications.

It was observed by the learned Judge, Special Court (NDPS) that firstly, on the basis of records, it has been revealed that pseudoephedrine tablets were seized

from the possession of Lunkhohao Haokip and Zangminthang Tuboi in FIR No. 27(2) 2013 Keg P.S. though they had no authority to transport, possess or use the same and as such, there is a prima facie case against them. But, the said pseudoephedrine tablets were not recovered nor seized from the possession of other accused persons.

Secondly, the learned Judge also observed what the Hon"ble Supreme Court had held in

Baldev Singh v. State of Punjab, Criminal Appeal No. 553 of 2008 decided on 6.5.2009, reported in (: AIR 2009 SC (Supp) 1629)

that "Mere knowledge, even discussion, of the Plan would not per se constitute conspiracy." What could be inferred from the above observation of the learned Judge is that merely because the accused persons discussed or knew about the plan to transport illicit drugs it does not tantamount to entering into any criminal conspiracy, as though the learned Judge was conducting a trial.

Thirdly, the learned Judge also observed that seized pseudoephedrine tablets were controlled substances and the provisions of Sections 19 , 24 and 27A of the ND & PS Act will not be applicable in respect of controlled substance. It was held that "commercial quantity" as defined under clause (vii-a) of Section 2 of NDPS Act refers only to narcotic drugs and psychotropic substances and not to controlled substance. Therefore, rigours of Section 37(1)(b) of NDPS Act will not be applicable in relation to seizure of pseudoephedrine tablets. As a natural corollary, provisions of Section 36A(4) of NDPS Act would also not be applicable.

Fourthly, the learned Judge held that the normal provisions of Section 167(2) of the Cr.P.C. would apply and the rigours of Section 37(1)(b) or of Section 36A(4) of the NDPS Act will not be applicable to the case as mentioned above. The learned Judge, after observing that the accused persons had been in custody for more than the statutory period of 120 days prescribed u/s 167(2) of the Cr.P.C. and since no charge-sheet had been filed and the accused persons had exercised their option for releasing them on bail for which notice had been received by the learned P.P. and as there was no material to suggest that the accused may abscond or temper with the investigation, held that the accused persons were entitled to be released on bail and accordingly, released the accused persons on bail subject to execution of P/R bond of Rs. 1,00,000 (Rupees one lakh) each with a surety of the like amount and other conditions vide common order dated 12.7.2013 passed in Cril. Misc. (B) Case No. 88-A of 2013, Cril. Misc. (B) Case No. 89-B of 2013, Cril. Misc. (B) Case No. 90-A of 2013, Cril. Misc. (B) Case No. 91-A of 2013 and common order dated 17.7.2013 passed in Cril. Misc. (B) Case No. 18 of 2013, Cril. Misc. (B) Case No. 117 of 2013 Cril. Misc. (B) Case No. 120 of 2013.

7. Being aggrieved by the aforesaid orders dated 12.7.2013 and 17.7.2013 passed by the learned Judge, Special Court (NDPS), Manipur releasing the accused respondents on bail, the State has preferred these revision petitions u/s

397 read with Section 439(2) and 401 of Cr.P.C. for setting aside or quashing the orders dated 12.7.2013 and 17.7.2013 passed by the learned Judge, Special Court (NDPS), Manipur.

8. The main ground on which the orders dated 12.7.2013 and 17.7.2013 passed by the learned Judge, Special Court (NDPS), Manipur releasing the accused persons has been assailed is that the learned Judge had failed to consider the conditions imposed u/s 37(1)(b) of the NDPS Act before passing the orders releasing the accused persons on bail. It has been submitted that section 37(1)(b) of the NDPS Act specifically provides that no person shall be granted bail unless the two conditions are fulfilled. These are (i) there has to be a satisfaction of the Court that there are reasonable grounds for believing that the accused is not guilty, and (ii) that he is not likely to commit any offence while on bail. Accordingly, if either of the said two conditions is not fulfilled, the accused could not be released on bail.

In the present case, according to the learned P.P. for the State, the learned Judge has failed to consider whether the aforesaid two conditions are fulfilled or not before releasing the accused on bail.

According to the learned P.P., even though the FIR No. 27(2)2013 Kcg P.S. was initially registered in connection with seizure of pseudoephedrine tablets from the possession of two of the accused while frisking on the National Highway No. 102 at Pallel on 24.2.2013 as mentioned above, on further investigation in the matter, a large quantity of Ketamin Hydrochloride Injection was subsequently recovered from the residence of Seikholen Haokip on 25.2.2013. Even though pseudoephedrine tablet seized earlier may be a controlled substance, the said Ketamin Hydrochloride Injection seized subsequently is a psychotropic substance in terms of Section 2(xxiii) as it is a preparation of "Ketamine" which is undeniably a scheduled psychotropic substance mentioned in Sl. No. 110-A of the list of psychotropic substances given in the Schedule to the NDPS Act and as such, since the quantity seized was evidently a huge quantity and more than "500 gm" which is notified to be of commercial quantity in the Notification issued by the Central Government and without any doubt was of "commercial quantity", rigours of Section 37(1)(b) of the NDPS Act would apply in the present case arising out of FIR No. 27(2)2013 Kcg P.S.

9. According to the learned PP, investigation has clearly revealed that all the accused persons had entered into a conspiracy to deal with not only pseudoephedrine tablets but also Ketamin Hydrochloride Injection which is undisputedly a psychotropic substance and as such, the learned Judge, Special Court (NDPS), Manipur ought to have considered this factum of seizure of Ketamin Hydrochloride Injection at the time of consideration of bail of the accused respondents u/s 37 of the NDPS Act. The learned PP has stated that the seizure of the said drugs, pseudoephedrine tablets and Ketamin Hydrochloride Injections had been duly recorded during the investigation by preparing seizure memos after observing necessary formalities which are on record and were

produced before the Court at the time of consideration of the bail applications and has submitted that all the accused persons were in association and had entered in a criminal conspiracy to deal with the aforesaid banned drugs. In this regard, the learned P.P. has highlighted the fact that these psychotropic substances of Ketamin Hydrochloride Injections were recovered and seized from the house of Seikholen Haokip who was also accused of concealing and storing the pseudoephedrine tablets seized earlier on 24.02.2013 in his out house. It has been stated that the said Seikholen Haokip along with Lunkhohao Haokip and other accused were involved in loading of pseudoephedrine tablets in the evening of 23.2.2013 in the seized vehicles. It was also pointed that Colonel Ajay Chowdhury, Ngairangbam Brojendro Singh and R.K. Babloo Singh, the other accused also had come to the residence of Seikholen Haokip in the evening of 23.2.2013 and it was agreed that the Tata Safari belonging to the wife of Seikholen Haokip which was fully loaded with pseudoephedrine tablets be kept in the M-Sector, Imphal for security reasons and accordingly, the said Tata Safari, which was fully loaded with illicit drugs was kept in the M-Sector, Imphal in the evening of 23.2.2013 with the help of the said Colonel Ajay Chowdhury. It has been also stated that all the accused persons had assembled inside the M-Sector, Imphal in the morning of 24.2.2013 before proceeding towards Moreh. These, according to the learned P.P., clearly indicate the very close nexus of all the accused persons had among themselves by entering into a criminal conspiracy. Therefore, the learned P.P. submitted that all the accused persons were part of a well organised gang involved in storage and transportation of controlled and psychotropic substances and investigation, so far, had indicated complicity of all the accused persons with the seizure of Ketamin Hydrochloride injection from the house of Seikholen Haokip. Learned P.P. has submitted that the arrest of the accused persons at Pallel on 24.2.2013 and subsequent seizure of Ketamin Hydrochloride Injection from the residence of Seikholen Haokip on 25.2.2013 in presence of Lunkhohao Haokip on the disclosure of the other accused persons were inter connected. The learned P.P. also submitted that the accused namely, Lunkhohao Haokip had stated during the investigation that the drugs i.e., pseudoephedrine tablets and Ketamin Hydrochloride Tablets were brought by him along with Zangminthang and kept in the residence of Seikholen Haokip with his knowledge on 22.02.2013 before the said drugs were seized on 24.02.2013 and 25.02.2013 respectively as mentioned above. The learned P.P. also stated that the said Lunkhohao Haokip, who was a distant relative of Seikholen Haokip had stated in detail how he contacted other accused persons relating to the said drugs. Accordingly, it has been submitted that all the accused in association and collusion were involved in dealing with the said two kinds of drugs. Accordingly, learned Judge, Special Court (NDPS), Manipur could not have ignored that aspect of the investigation which revealed the nexus of the accused persons with the seizure of the psychotropic substance of Ketamin Hydrochloride Injection from the house of Seikholen Haokip. In view of the above, according to the learned P.P., the learned Judge, Special Court (NDPS), Manipur made the fatal error in not considering the provisions of Section 37(1)(b) of the NDPS Act at the time of

passing the orders for releasing the accused persons on bail and as such, grant of bail to the accused by the learned Judge, Special Court (NDPS), Manipur by totally ignoring the seizure of Ketamin Hydrochloride tablets, is vitiated and is liable to be interfered with.

10. According to the learned P.P., even if it is held that pseudoephedrine tablets are controlled substances as observed by the learned Judge, and as such, dealing with the same only, may not attract the rigours of Section 37(1)(b) of NDPS Act, arrest of the accused persons in connection with seizure of the Ketamin Hydrochloride Injection, which undoubtedly, is a banned psychotropic substance in terms of Section 2(xxiii) of the NDPS Act and is of "commercial quantity", had changed the entire complexion of the case and rigours of Section 37(1)(b) of NDPS Act would be attracted. According to learned P.P. all the accused have been arrested in connection with FIR No. 27(2) 2013-Kcg-PS in which the seizure of Ketamin Hydrochloride Injection was made. In view of the above, the learned Judge, Special Court (NDPS), Manipur was to give a finding that there are reasonable grounds for believing that the accused persons are not guilty of such offence and that they are not likely to commit any offence while on bail. Unfortunately, the learned Judge, Special Court (NDPS), Manipur proceeded to consider the bail applications only in respect of the seizure of pseudoephedrine, a controlled substance by totally ignoring the seizure of Ketamin. Hydrochloride Injection and held that the rigours of Section 37(1)(b) of NDPS Act will not be applicable and accordingly, granted bail on the ground that since the accused persons had already been in custody beyond the statutory period as provided under Section, 167 of Cr.P.C., which according to the learned P.P. is illegal for the reasons as mentioned above.

Accordingly, the learned P.P. has submitted that the orders dated 12.7.2013 and 17.7.2013 passed by the learned Judge, Special Court (NDPS), Manipur enlarging the petitioners on bail are liable to be interfered with and set aside.

11. Mr. N. Ibotombi Singh, learned senior counsel appearing for the accused persons in Cril. Revision Petition Nos. 14 of 2013, 15 of 2013, 16 of 2013 and 18 of 2013, however, has submitted that the order passed by the learned Judge, Special Court (NDPS), Manipur dated 17.7.2013 is in accordance with law and it cannot be faulted warranting any interference from this Court. Mr. N. Ibotombi Singh, learned senior counsel submitted that first of all, as evident from the FIR itself, initially the FIR was filed against the accused persons under sections 21 and 22 of the NDPS Act. Subsequently, other sections, namely, sections 23 , 25A and 60 of NDPS Act as well as 140 /136 /34 IPC were added but the investigating agency never added other sections namely, Section 19 or Section 24 or Section 27A so as to bring the case within the purview of Section 37(1) (b) of NDPS Act. According to the learned senior counsel, in the present case, neither Section 19 nor Section 24 nor Section 27A of NDPS Act are involved and as such, the question of invoking the provisions of Section 37(1)(b) of NDPS Act does not arise. According to the learned senior counsel, Section 19 of NDPS

Act deals with the cultivation of opium, which is not the case herein. Further, it is not the case of the State that the accused persons had been dealing in psychotropic and narcotic substances by obtaining from outside India and supplying to any other person outside India and as such, Section 24 of NDPS Act is not applicable. Similarly, Section 27A can be invoked only if the accused persons are involved in any of the activities specified in sub-clauses (i) to (v) of Clause (viii-a) of Section 2, which is not the case as the accused persons were arrested in connection with pseudoephedrine which is a controlled substance.

12. Learned senior counsel appearing for the respondents also submitted that the Investigating Agency had never charged the accused persons of dealing with the Ketamin Hydrochloride Injections which were seized from the house of Seikholen Haokip in which the other accused persons had no role. In fact, whether the said Ketamin Hydrochloride Injections were really seized or not also cannot be said with certainty as the Investigating Agency never revealed the seizure memo in respect of the Ketamin Hydrochloride Injections and a copy of the seizure memo is also not enclosed in the present revision petitions. Learned senior counsel submitted that even in the bail objection reports submitted by the prosecution, none of the offending sections which would attract the rigours of Section 37(1)(b) of the NDPS Act is mentioned. Therefore, in absence of such reference to the seizure of Ketamin Hydrochloride Injection or the offending sections, no occasion arose for the learned Judge, Special Court (NDPS) to consider the same and accordingly, it has not been rightly considered by the court below. Accordingly, learned senior counsel has submitted that the impugned order dated 17.7.2013 does not warrant any interference from this Court.

According to the learned senior counsel, had this factum of seizure of Ketamin Hydrochloride Injections had been mentioned in the FIR and brought to the notice of the learned Judge, Special Court (NDPS), Manipur, the learned Judge could have considered whether the rigours of the provisions of Section 37(1)(b) of NDPS Act would be attracted or not. Hence, the decision of the learned Special Judge cannot be faulted with.

13. Learned senior counsel has submitted that otherwise also, the accused persons would have no objection if the matter is remanded to the Court below for reconsideration of the bail applications as regards the applicability of Section 37(1)(b) of NDPS Act in the present case in the light of the seizure of Ketamin Hydrochloride Injection.

Mr. N. Ibotombi, learned senior counsel, however, has submitted that if this Court remands the matter back to the NDPS Court for fresh reconsideration of the bail applications of the accused respondents with reference to the seizure of Ketamin Hydrochloride Injections, since more than 120 days have already expired as on date after the arrest of the accused persons, the accused respondents would not be liable to be remanded to further judicial custody for the purpose of reconsideration of the bail applications and would be entitled to remain on bail.

The learned senior counsel has submitted that the respondents other than Seikholen Haokip were arrested on 24.2.2013 which is the admitted date of arrest and now more than 227 days have passed and accordingly, since the stipulated 120 days as mentioned in Section 167(2) , Cr.P.C. or 180 days mentioned in Section 36(A) sub-section (4) of NDPS Act have already lapsed, the respondents would be entitled to be set free on bail and remain enlarged on bail as of right. Learned senior counsel has also submitted that while computing 120 days, the period during which the respondents are on bail by an order of the Court below can be counted and cannot be ignored and in this regard, has relied on the judgment of the Hon"ble Supreme Court reported in

Sunil Fulchand Shah v. Union of India & Ors. (2000) 3 SCC 409 (2000 Cri. L.J. 1444)

. The learned senior counsel has submitted that in that case which was dealing with preventive detention under Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974, the Hon"ble Supreme Court held that while computing the total days of detention permissible under the preventive detention law, the period during which a person was enlarged on parole has to be also taken into account as it has to be treated as constructive custody. Accordingly, it has been argued that the period during which the accused respondents have been released on bail can be also treated to be constructive custody as the Court has control over the respondents and the same ought to be counted for the purpose of computing 120 days after detention.

Further, learned senior counsel has submitted that if the period during which the accused respondents are on bail are not taken into account for counting the period of 120 days from the initial arrest of accused, it will lead to an absurd situation as there would be different statutory periods for different accused persons in the same case. Thus, if a person is continuously in custody, he would be entitled to be released after completing 120 days if the charge-sheet has not been filed from the date of arrest but 120 days would fall on different date in respect of another person in the same case who had been erroneously released earlier on bail but the bail order is cancelled subsequently. In other words, there will be different dates of completion of the statutory period of 120 days for different accused persons in respect of the same case which is not contemplated. The learned senior counsel has accordingly submitted that 120 days has to be computed from the date of arrest of the accused persons irrespective of the release on bail on different dates. According to him, in the present case, the statutory period of 120 days is already over some time in August, 2013 and hence, since more than 120 days had passed as on date and since the authorities have not filed the charge-sheet, the accused respondents would be entitled to remain on bail pending reconsideration of the bail applications of the accused persons.

14. In response to the aforesaid contentions of the learned senior counsel appearing for the respondents, the learned P.P. has submitted that it cannot be

said that Section 37(1)(b) of NDPS Act cannot be invoked in the present case inasmuch as the accused persons were arrested in a case (FIR No. 27(2) 2013 Keg. P.S.) which involved seizure of prohibited psychotropic substance of Ketamin Hydrochloride Injection. According to the learned P.P., there are sufficient materials in the case diary to show that the present accused persons were involved or associated or had links with the psychotropic substances, Ketamin Hydrochloride Injections which were seized from the residence of Seikholen Haokip. Since there are enough materials to show involvement of these accused persons with the aforesaid Psychotropic drugs, these were reflected in the bail objection reports submitted, along with the case diary at the time of consecration of the bail applications. The learned P.P. has contended that even if the aforesaid sections viz., 19 , 24 or 27A are not specifically mentioned in the FIR, since there were sufficient materials, relating to involvement of the accused person with the seized banned psychotropic substances in the case diary, thus offences involving commercial quantity, the learned Judge could not have ignored the applicability of Section 37(1)(b) of the ND & PS Act merely on the ground that certain relevant sections were not mentioned in the FIR or in the bail objection report.

15. Mr. Darakishwor, learned counsel appearing for the respondents in Cril. Revision Petn. Nos. 17 of 2013, 19 of 2013 and 20 of 2013 has raised a preliminary objection that this Court has no jurisdiction to entertain the present revision petitions which have been filed by the State u/s 397 read with Section 431(2) with 401 of Cr.P.C.

According to Mr. Darakiswar, learned counsel, sub-section (2) of Section 397 of Cr.P.C. clearly provides that power of revision conferred by sub-section (1) of Section 397 shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceeding. According to the learned counsel, since bail order is an interlocutory order as has been held by the Supreme Court in Amar Nath & Ors. v. State of Haryana & Ors. : AIR 1997 SC 2185, no revision would lie u/s 397 against the impugned bail order dated 12.7.2013 passed by the learned Judge, Special Court (NDPS), Manipur granting bail to the accused respondents.

Learned counsel further submitted that even though u/s 401 of the Cr.P.C., High Court has power of revision, the said provision cannot be used to defeat the specific provisions u/s 397(2) which specifically debars the power of revision in relation to any interlocutory order, relying on the aforesaid decision of the Hon"ble Supreme Court. Accordingly, learned counsel appearing for the respondents has submitted that the present revision petition would not lie.

Learned counsel also has submitted that the present petitions have been filed under High Court Code No. 10262 which is meant for revision petition, which is not maintainable for the reasons stated above. It has been also submitted that the present revision petitions have not been filed under High Court Code No. 10293 which is meant for applications filed for cancellation of the bail order as

permissible u/s 439(2) of the Cr.P.C.

Otherwise also, it has been submitted that, even if these revision petitions are treated to be applications for cancellation of bail already granted to the respondents, it has to be done strictly in terms of Section 439(2) , Cr.P.C. as explained by the Supreme Court.

The learned counsel has submitted that the powers given u/s 439(2) of Cr.P.C. is for the purpose of cancellation of a bail granted by a Court which is a special power of the High Court or Court of Sessions, which however, is subject to certain conditions as held by the Hon'ble Supreme Court in

Sami Ullaha v. Superintendent, Narcotic Central Bureau, : AIR 2009 SC 1357 (2009 Cri. L.J. 1306)

viz.,

(a) The accused has attempted to tamper with evidence,

(b) He has attempted to influence the witnesses

(c) There is the possibility of the accused to abscond and, therefore, there is a possibility that the accused may not be available for trial etc.

In other words, this power u/s 439(2) has to be exercised sparingly by the Court only on fulfillment of certain conditions as mentioned above and since the respondents have not done anything in violation of the terms of the conditions imposed by the Court below and also have not done anything which would disentitle them from further enjoyment of the bail granted by the Court, no order for cancellation of the bail already granted could be passed.

16. Learned counsel appearing for the respondents has also submitted that even though there was only one incident which occurred on 24.2.2013 involving seizure of pseudoephedrine tablets from the three vehicles which were coming together in a convoy, the police chose to register three separate FIRs in respect of the same incident which is not permissible in law. According to him, on that said day, all the three vehicles which were mentioned in the three separate FIRs were travelling in a group in a convoy and therefore, only one FIR should have been registered. Thus, it has been contended that registration of three separate FIRs in respect of the same incident, is only for the purpose of harassing the respondents and causing prejudice to the interest of the accused persons as they are sought to be prosecuted thrice for the same incident.

17. Learned counsel appearing for the respondents has submitted that FIR No. 27(2)2013 Kcg P.S. was registered on the basis of an original ejahar and in the said original ejahar, the complainant has mentioned only the seizure of pseudoephedrine tablets and seizure of Ketamin Hydrochloride Injection is not mentioned at all. Learned counsel has also submitted that no separate FIR had been registered regarding the seizure of Ketamin Hydrochloride Injection from Seikholen Haokip. Learned counsel has submitted that the seizure of Ketamin

Hydrochloride Injection was made on 25.2.2013 from the residence of Seikholen Haokip at around 8 p.m. as per the version of the police. According to the learned counsel, however, there is nothing on record to show that the procedures required for executing seizure of psychotropic substances as provided under sections 41, 42 and 55 of NDPS Act have been complied with. Learned counsel has submitted that in the bail objection report submitted by the Investigating Officer on 8.3.2013, nothing is mentioned that these mandatory procedures have been complied with at the time of effecting seizure of the said Ketamin Hydrochloride Injections. According to Mr. Darakishwar, learned counsel, if these mandatory provisions had not been complied with for effecting seizure, this would constitute a good ground for grant of bail as held by the Bombay High Court in

Lawrence D'Souza v. State of Maharashtra, : 1992 Cri. Law Journal 399

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18. Learned counsel appearing for the respondents has also submitted that the seizure of the Ketamin Hydrochloride Injection is in the liquid form and therefore, it has to be shown by the investigating agency that this liquid form contains Ketamin, which is a psychotropic substance by subjecting to scientific tests, and also that the seized materials were beyond the permissible quantity so as to constitute "commercial quantity" which however, has not been done in the present case and as such, the accused persons should be given the benefit of doubt and, would be entitled to be released on bail.

19. Learned counsel appearing for the respondents has also submitted that the accused persons have been charged with conspiracy in dealing with a contraband psychotropic substance. It has been submitted that however, in the present case, there is no direct evidence of involvement of the accused persons other than Seikholen Haokip. The investigating authority must have relied on circumstantial evidences, which however, have not been indicated nor shown to have existed. Therefore, in absence of credible circumstantial evidences to link the accused persons other than Seikholen Haokip to the seizure of Ketamin Hydrochloride Injection, the accused persons are entitled to be released on bail. Learned counsel has also submitted that since the formalities required for the seizure of psychotropic substances after dark have not been followed and accordingly, not indicated in the bail objection report, the learned Judge was not bound to discuss about the seizure of Ketamin Hydrochloride Injection and in fact, did not discuss the issue relating to the seizure of Ketamin Hydrochloride Injection. Accordingly, it has been submitted that the bail order dated 12.7.2013 passed by the learned Judge, Special Court (NDPS), ignoring the seizure of Ketamin Hydrochloride Injection cannot be held to be Unjustified or improper.

20. In response to the aforesaid objections raised by Mr. Darakishwar, the learned counsel appearing for the respondents; the learned P.P. has submitted that if the bail order has been passed in complete violation of the mandatory provisions of

law, the revision petition certainly would lie and in this regard, has relied on the judgment of the Gauhati High Court rendered in the case of

Lalsawmlien Kungate v. Ashem Ibungo Singh alias Nungshi, reported in : 2007 (1) GLT 200

. Learned P.P. has also submitted that it is not correct to say that provisions of Sections 41 , 42 and 50 of NDPS Act were not complied with as all the necessary formalities required under the aforesaid provisions were duly observed at the time of making seizure of the Ketamin Hydrochloride Injection as can be seen from the case diary and since case diary was produced before the learned Judge, Special Court (NDPS), Manipur and it was on record, it cannot be said that the learned Judge had no knowledge of the same.

Learned P.P. has also relied on the judgment of the Hon"ble Supreme Court reported in the case of

Puran v. Rambilas and Anr. (2001) 6 SCC 338 para 11 (2001 Cri. L.J. 2566)

wherein it has been held that the order of granting bail passed by ignoring the material and evidence on record and without giving reasons, would be perverse and contrary to principles of law and the said order would itself provide a ground for moving an application for cancellation of bail and such ground for cancellation is different from the ground that the accused mis-conducted himself or some new facts have emerged which call for cancellation of the bail. Accordingly, learned P.P. has submitted that there is no merit in the objection raised by the accused persons/respondents.

21. We will now consider the rival contentions of the parties and decision of the Ld. Judge, Special Court (NDPS).

Under the normal circumstances, grant of bail is considered under Chapter-XXXIII of Code of Criminal Procedure. There is another provision u/s 167 of Cr.P.C. under Chapter XII which provides for release on bail of an accused already in custody on the failure of the Investigating Agency to complete the investigation within the period specified therein, which, in the normal parlance, is called default bail. u/s 167(2) , Cr.P.C. no Magistrate shall authorise detention of an accused person in custody for a total period exceeding 90 days where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than ten years and 60 days where the investigation relates to any other offences and the accused person shall be released on bail if he is prepared to and does furnish bail and every person released on bail under this sub-section shall be deemed to have been released under the provisions of Chapter XXXIII.

It may be stated that under proviso (a)(i) to sub-section (2) of Section 167 , Cr.P.C., the statutory period provided is 90 days where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than ten years and 60 days relating to other cases under proviso

2(a)(ii). The said "90 days" and "60 days" in the Cr.P.C. have been changed to "180 days" and "120 days" respectively by a State Amendment in the State of Manipur. In other words, where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than ten years in Manipur, the statutory period of investigation would be 180 days. Thus, as provided u/s 167(2) , Cr.P.C., a person in custody would have as a matter of right to be released on bail if the investigation could not be completed within the aforesaid period.

However, considering the nature of NDPS Act, 1985 which was specifically enacted to deal with the menace of narcotic drugs and psychotropic substances in the society and to provide for stringent provisions to control and regulate the activities relating to narcotic drugs and psychotropic substances, strict provisions have been also made to deal with the grant of bail. Accordingly, in addition to the normal provisions governing the grant of bail as provided under the Code of Criminal Procedure, stricter provisions have been incorporated in the ND & PS Act to make grant of bail more difficult in respect of certain offences as prescribed in the said Act. Accordingly, Section 37 has been incorporated whereby under sub-section (1)(b) thereof, it has been provided that before considering bail application of any person who is accused of an offence u/s 19 or Section 24 or Section 27A and also for offences involving commercial quantity under the NDPS Act, such person shall not be released on bail unless:

(1) the Public Prosecutor has been given opportunity to oppose the application for such release, and

(2) where the Public Prosecutor opposes the application,

(a) Court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and

(b) that he is not likely to commit any offence while on bail.

It has been also specifically provided in sub-section (2) of Section 37 that the limitation on granting of bail as mentioned above are in addition to the limitation under the Code of Criminal Procedure, 1973 or any other law for the time being in force for granting of bail.

Further, it has been provided u/s 36A(4) of the NDPS Act that in respect of persons accused of an offence punishable u/s 19 or Section 24 or Section 27A or for offences involving commercial quantity the references in sub-section (2) of Section 167 of the Code of Criminal Procedure, 1973 thereof to "ninety days", where they occur, shall be construed as reference to "one hundred and eighty days" and it has been provided further that if it is not possible to complete the investigation within the said period of one hundred and eighty days, the Special Court may extend the said period up to one year on the report of the Public Prosecutor indicating the progress of the investigation and the specific reasons for the detention of the accused beyond the said period of one hundred and

eighty days.

Therefore, the purpose of incorporation of the aforesaid Section 36A(4) and Section 37(1)(b) of NDPS Act is to make grant of bail stricter and more difficult. Grant of bail under the NDPS Act is more of an exception rather than norm as under the normal criminal jurisprudence. By incorporating these provisions under the NDPS Act, the scope, parameters, approach and perspective have been altered. While considering bail for offences under the Penal Code and other criminal laws, one of the considerations is whether there are sufficient materials to show the involvement of an accused in the offence charged, thus presuming his innocence. However, in the case of ND & PS Act, when sections 19 , 24 , 27A or offences involving commercial quantity are involved, the consideration would be whether there are sufficient materials to show that an accused is not guilty of such offence. Thus, the approach of the Courts in these two situations seems to be divergent. While in the normal criminal cases, the Court would tend to presume innocence and examine whether there are materials to implicate the accused, in certain cases involving NDPS Act, the presumption of guilt seems to be approach, thus the approach of the NDPS Court will be to examine whether the accused is not guilty of the offence charged. Therefore, unless, the Court applies its mind on these two vital aspects and makes a finding on each of these two conditions as mentioned in section 37(1)(b) of the NDPS Act, the bail could not be granted to any accused charged of any offence.

22. In this regard it may be apposite to refer to some related decisions of the Hon"ble Supreme Court while granting bail involving offences under the NDPS Act.

In

Collector of Customs v. Ahmadaliev Nodira (2004) 3 SCC 549 (2004 Cri. L.J. 1810)

, the Supreme Court observed,

7. The limitations on granting of bail come in only when the question of granting bail arises on merits. Apart from the grant of opportunity to the Public Prosecutor, the other twin conditions which really have relevance so far as the present accused-respondent is concerned, are: the satisfaction of 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. The conditions are cumulative and not alternative. The satisfaction contemplated regarding the accused being not guilty has to be based on reasonable grounds. 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

"N.R. Mon v. Md. Nasimuddin", : 2008 Cri. L.J. 3491

, the Supreme Court approvingly quoted the earlier decision in

"Supdt. Narcotics Control Bureau v. R. Paulsamy", (2000) 9 SCC 549 (2001 Cri. L.J. 117)

, where it was held that

.....in matters arising out of the Narcotic Drugs and Psychotropic Substances Act grant of bail is controlled by Section 37 of the Act and it is mandatory for the Court to hear the Public Prosecutor and come to the prima facie conclusion that there is no material to come to the conclusion that the accused could be held guilty of the charges levelled against him. Since such a conclusion is not recorded by the High Court and is not supported by reasons we think the impugned order cannot be sustained.

Further, in

"Union of India v. Rattan Mallik", : 2009 Cri. L.J. 3042 (2009) 2 SCC 624

, the Supreme Court held that,

13. It is plain from a bare reading of the non-obstante clause in the Section and subsection (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 u/s 439 of the Code of Criminal Procedure, 1973, it is also subject to the restrictions placed by sub-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 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". 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

Union of India v. Shiv Shanker Kesari (2007) 7 SCC 798

). Thus, recording of satisfaction on both the aspects, noted above, is sine qua non for granting of bail under the NDPS Act. 2.

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 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.

16. Thus, in our opinion, the impugned order having been passed ignoring the mandatory requirements of Section 37 of the NDPS Act, it cannot be sustained. Accordingly, the appeal is allowed and the matter is remitted back to the High Court for fresh consideration of the application filed by the respondent for suspension of sentence and for granting of bail, keeping in view the parameters of Section 37 of the NDPS Act, enumerated above. We further direct that the bail application shall be taken up for consideration only after the respondent surrenders to custody. The respondent is directed to surrender to custody within two weeks of the date of this order, failing which the High Court will take appropriate steps for his arrest.

The aforesaid judgment in

Rattan Mallik (: 2009 Cri. L.J. 3042) (supra)

was followed in

"State of Maharashtra v. Vishwanath Maranna Shetty", : 2013 Cri. L.J. 205 (2012) 10 SCC 56

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23. In the light of the law as discussed above, we may examine whether the learned Judge, Special Court (ND & PS) had considered the applicability of Section 37(1)(b) of NDPS Act with reference to the seizure of Ketamin Hydrochloride Injection and considered the mandatory conditions as referred to above.

If the accused respondents are not involved with the said Ketamin Hydrochloride Injection seized in FIR No. 27(2)2013 Kcg P.S., the question of invoking section 37(1)(b) may not arise. On the other hand, if it is found that there are materials to show that the accused respondents are involved with the said psychotropic substance seized, provisions of section 37(1)(b) will be attracted and considerations mentioned there have to be examined by the Court before grant of bail.

Therefore, this Court has to consider whether in the present case, any of the aforesaid Section 19 or section 24 or section 27A or any other offences involving commercial quantity mentioned in Section 36A(4) or Section 37(1)(b)

of NDPS Act is attracted against the present accused persons. If the offences mentioned in Section 37(1)(b) of NDPS Act are not applicable to the accused persons, the rigours of stringent provisions in Section 37(1)(b) of NDPS Act mentioned above will not be applicable nor of Section 36A(4) , NDPS Act and normal law of bail as provided under Code of Criminal Procedure, 1973 will be applicable.

24. From the records, what is seen is that all the accused persons other than accused Seikholen Haokip were initially arrested in connection with the seizure of the pseudoephedrine tablets on the Indo-Myanmar Road at Pallel in the morning of 24.2.2013. Since pseudoephedrine tablet is not an offending drug in terms of the sub-section (3) of section 2 of the NDPS Act but a controlled substance, the case of these accused persons cannot be brought u/s 37(1)(b) of NDPS Act if it relates only to the seizure of the pseudoephedrine tablets. However, the State has stated that even though they were initially arrested in connection with the seizure of the pseudoephedrine, on further investigation of the case, subsequently on the next day on 25.2.2013 the police made the seizure of Ketamin Hydrochloride Injections from Seikholen Haokip, which were kept in his house for the purpose of transportation up to Moreh through his associates in the crime. Seikholen Haokip was also involved and wanted in connection with the pseudoephedrine tablets seized earlier in the same FIR case. The aforesaid aspects were specifically mentioned by the Investigating Officer in their bail objection reports filed before the learned Judge, Special Court (NDPS), Manipur. The relevant portion of the bail objection report indicating the nexus between the two transactions and, with the other accused respondents may be reproduced as follows:

On interrogation of the accused persons, they admitted to have committed the offence charged against them. During further course of investigation, in the evening of 25/02/2013 conducted search in the out-house of the accused person Seikholen Haokip (35) s/o T.N. Haiokip of B. Vengnon, Tuibong Churachandpur a/p Deulahland 5th Avenue and recovered four Nos. of thermocold boxes containing altogether 2316 Nos. of Ketamin Hydrochloride Injection I.P. Ektamin 500 mg. and he was immediately arrested at 8.00 p.m. of the same day and seized the four Nos. of thermocold boxes containing 2316 Nos. of Ketamin Hydrochloride Injection I.P. Ektamin 500 mg. from his possession. He was produced before the Court of Hon''ble CJM/Thoubal on 26/02/2013 along with the seized articles with a prayer for remanding him the police custody for period of 11 days w.e.f. 26/02/2013 to 08/03/2013, which was allowed and the Hon''ble Court remanded him in the police custody till 08/03/2012. On his interrogation, he admitted to have kept concealed the illicit drugs in his out-house in collusion with his associates for transportation up to Moreh through his associates of the crime.

(Emphasis added)

According to the investigating agency, the aforesaid two seizures are linked and

all the accused persons are connected with the said seized Ketamin Hydrochloride Injection which was of a large quantity, kept in four thermocold boxes (containing 2316 Nos. of Ketamin Hydrochloride Injection LP. Ektamin 500 mg), which is undoubtedly a "commercial quantity" which is beyond the permissible limit of 50 gm. Therefore, the contention of the learned P.P. that the case of the accused persons would fall within the provisions of Section 37(1)(b) of NDPS Act in which event, the rigours of that Section would come into operation and the Court has to give a finding to its satisfaction that there are reasonable grounds for believing that the accused persons are not guilty of such offence of dealing with commercial quantity of psychotropic substances and that they are not likely to commit any offence while on bail finds force.

As evident from the impugned orders dated 12.7.2013 and 17.7.2013, there is nothing to show that the learned Judge, Special Court (NDPS), Manipur had applied his mind regarding the involvement of the present accused respondents with the seizure of Ketamin Hydrochloride Injection, which is admittedly a banned Psychotropic substance. What is evident from the impugned orders dated 12.7.2013 and 17.7.2013 is that the learned Judge has discussed the matter only with reference to the seizure of pseudoephedrine drugs, admittedly a controlled substance and on that ground alone, held that the rigours of Section 37(1) of NDPS Act will not be applicable in the present case and by invoking the normal provisions for grant of bail provided u/s 167(2) of Cr.P.C., enlarged the accused persons on bail. The learned Judge, Special Court (NDPS), Manipur has not made any categorical or specific finding that the accused are not involved at all with the seizure of Ketamin Hydrochloride Injection so as to relieve them of the rigours of Section 37(1)(b) NDPS Act.

25. It may be also observed that even if the relevant sections (viz. Sections 19 , 24 or 27A) are not mentioned in the FIR or the bail objection report, if materials are available about the role of the accused in the case diary, the Court ought to have considered the aspect, *moreso*, when the involvement of the accused with seizure of Ketamin Hydrochloride Injection had been specifically mentioned in the bail objection report as quoted above. After all, the investigation was still going on and not yet over. Therefore, the Court ought to have considered the materials as available in the case diary which was produced before the Court to consider as to whether the accused persons are also involved or associated with the seizure of the Ketamin Hydrochloride Injection which, however, seems to not have been done by the learned Judge. If there are materials to show or indicate that the accused are also involved with the Ketamin Hydrochloride Tablets seized, Section 37(1)(b) will be applicable. If the learned Judge had given a specific finding to the effect that the accused persons other than Seikholen Haokip had nothing to do with the seizure of the Ketamin Hydrochloride Injection from the house of Seikholen Haokip in the evening of 25.2.2013, perhaps, things could have been different. However, there is no such discussion nor any finding much less a reference to it by the learned Judge, Special Court (NDPS), Manipur that the accused respondents are not involved

with the psychotropic substances seized, which the learned P.P. has strongly contended that they are, as discussed above. Therefore, in absence of any discussion and finding by the learned Judge as to whether the accused persons other than Seikholen Haokip are involved with the seizure of the Ketamin Hydrochloride Injection, this Court is of the opinion that the decision of the learned Judge suffers from non-application of mind as regards a very crucial and vital aspect of the role of the accused persons with the seizure of the psychotropic substance. Since the Investigating Agency had claimed in their bail objection reports that the accused persons are also involved with the seizure of the aforesaid Ketamin Hydrochloride Injection which is a prohibited Psychotropic substances under NDPS Act, it was incumbent upon the learned Judge to have considered whether the accused respondents are also involved or not, as such finding would drastically alter the nature of consideration for bail. If they are found to be involved, the learned Judge then has to give a finding that there are reasonable grounds for believing that accused persons are not guilty of such offences before releasing them on bail, which, unfortunately, had not been done by the learned Judge, Special Court (NDPS), Manipur.

Therefore, the contention of Mr. N. Ibotombi Singh, learned Senior Counsel that since the offending sections were not specifically mentioned in the FIR or the bail objection report for invoking the stringent provision of Section 37(1)(b) of NDPS Act does not Carry much conviction as there were sufficient materials available in the bail objection report and the case diary indicating and suggesting involvement of the respondents which could not have been ignored by the Ld. Judge, Special Court.

It may be also mentioned that the Investigating Agency had proceeded with the assumption that even pseudoephedrine tablets were also contraband psychotropic substance for the purpose of invoking the rigours of Section 37(1)(b) which, the learned Judge elaborately discussed to hold that pseudoephedrine tablets are merely a controlled substance and hence rigours of Section 37(1)(b) could not be invoked. Unfortunately, the learned Judge did not make any attempt to find out whether Ketamine Hydrochloride injections were psychotropic or controlled substance. If the learned Judge had done so and had given the finding that there are reasonable grounds for believing that the accused were not guilty of the offence charged and they are not likely to commit any offence while on bail, there would have been much less scope for this Court to interfere.

26. The other contention of the learned Senior counsel that even in the event of reconsideration by the Court below of the bail applications of the respondents, they would be liable to remain on bail cannot be accepted. That the present revision petitions are being allowed primarily on the ground that there was non application of mind by the learned Judge on very crucial and vital issues and also non-consideration of certain mandatory and relevant provisions as discussed above and not merely on the ground of difference in opinion in appreciation of evidence/materials for the grant of bail or because of some supervening

circumstances. Further, the judgment referred to rendered in

Sunil Fulchand Shah (: 2000 Cri. L.J. 1444) (supra)

will be not applicable in the present case as it was dealing with a preventive detention matter for which the parameters of consideration are much more stricter as it relates to detention of a person on mere apprehension to prevent certain alleged mischief, whereas while dealing with bail matters, the Courts deal with crimes and offences which have been already committed and possible involvement of the accused based on materials or evidence disclosed and not on apprehension. Hence, the legal parameters and yardsticks applied are of different nature and as such principles of law relating to preventive detention cannot be normally applied while dealing with grant of bail under normal criminal jurisprudence.

Otherwise also, it may be apposite to refer to para 33(6) of the aforesaid judgment in

Sunil Fulchand Shah (: 2000 Cri. L.J. 1444) (supra)

wherein it has been observed that,

33. The summary of my conclusions by way of answer to the questions posed in the earlier portion of this order are:

1 & 2.

6. The quashing of an order of detention by the High Court brings to an end such an order and if an appeal is allowed against the order of the High Court, the question whether or not the detenu should be made to surrender to undergo the remaining period of detention, would depend upon a variety of factors and in particular on the question of lapse of time between the date of detention, the order of the High Court, and the order of this Court, setting aside the order of the High Court.

A detenu need not be sent back to undergo the remaining period of detention, after a long lapse of time, when even the maximum prescribed period intended in the order of detention has expired, unless there still exists a proximate temporal nexus between the period of detention indicated in the order by which the detenu was required to be detained and the date when the detenu is required to be detained pursuant to the appellate order and the State is able to satisfy the court about the desirability of "further" or "continued" detention.

It may be noted that under the Section 36A(4) , NDPS Act, bail is not a matter of right as provided u/s 167(2) , Cr.P.C. which is by way of default. u/s 36A(4) even if the statutory period of 180 days after detention is over, the release on bail is not automatic or as a matter of right as it has been provided that if it is not possible to complete the investigation within the said period of one hundred and eighty days, the Special Court may extend the said period up to one year on the report of the Public Prosecutor indicating the progress of the investigation

and the specific reasons for the detention of the accused beyond the said period of one hundred and eighty days.

In the bail objection report submitted on 14.6.2013 the Investigating Officer had stated that the seized original samples of the drugs have been already sent to the Forensic laboratory for expert opinion and a good number of witnesses have been examined and maximum efforts are being made to track down and verify the names of persons mentioned by the arrested persons and the investigation is in good progress and accordingly prayed for rejection of the bail applications. However, as the Ld. Judge by holding that the Section 36A(4) is not applicable in the present case proceeded to consider the applications u/s 167(2) of Cr.P.C. and released the accused respondents on this ground that the statutory period of 120 days is already over.

It may be observed that since pseudoephedrine is a controlled substance, its use is controlled u/s 9A of the NDPS Act and contravention of which is punishable as provided u/s 25A . Section 25A provides that "if any person contravenes an order made u/s 9A , he shall be punishable with rigorous imprisonment for a term which may extend to ten years and shall also be liable to fine which may extend to one lakh rupees." According to the learned Judge, since no minimum punishment has been prescribed under the Act and the seized drug was a controlled substance and Section 37 being not applicable, the outcome would be that Section 36A(4) is also not applicable. It was also held that the punishment of the alleged offence under the IPC are of less than ten years, accordingly, section 167(2) of the Code would apply and by holding that the accused had been in custody for more than 120 days, which is more than the statutory period prescribed u/s 167(2) of the Code and since no charge-sheet has been filed and accused had exercised their option for releasing them on bail for which notice had been received by the P.P., the respondents would be entitled to be released on bail.

It may be stated that u/s 167(2) Cr.P.C., if the offence is punishable with death, imprisonment for life or imprisonment for a term of not less than ten years, the statutory period would be 180 days in the State of Manipur. In the present case, even if by ignoring the seizure of Ketamin Hydrochloride Injection, by dealing with the seizure of pseudoephedrine tablet only which is a controlled substance, punishment for dealing with pseudoephedrine tablet in contravention of Section 9A would be u/s 25A of the NDPS Act under which punishment may extend to ten years. In other words, a person could be punished for dealing with pseudoephedrine tablet u/s 25A NDPS Act to the extent of ten years. As stated above, Section 162(2) Cr.P.C. provides for the statutory period as 180 days where the investigation relates to an offence which is punishable for imprisonment for a term not less than ten years. Therefore, if a person can be imprisoned for a period of ten years for committing an offence u/s 9A punishable u/s 25A of NDPS Act, the statutory period would be 180 days and not 120 days. Therefore, on this count also, the learned Judge has erred in holding that the

respondents had been in custody for more than 120 days as the relevant period would be 180 days and as such, there has been non-application of mind by the learned Judge in this regard also.

It is to be also mentioned that if Section 37(1)(b) of NDPS Act is attracted in the present case, which this Court has already held to be so, the accused respondents could be released only if the Court is satisfied that there are grounds to believe that they are not guilty of the offence, which exercise had not been undertaken by the Court below as discussed above.

Accordingly, this Court is of the view that the respondents had been enlarged on bail on erroneous consideration and an unjustified order passed by the Court below, thus, the temporary relief obtained by the respondents by way of bail cannot be said to be deservedly earned. Hence, considering the scheme of the NDPS Act, where bail is not the norm but rather exception and considering the nature of the offences, this Court is of the view that the period during which the respondents have remained on bail could not be counted for the purpose of computing the statutory period.

27. Coming to the contentions of Mr. Darakishwar Singh, these seem to be also devoid of merits.

As regards the contention that since grant of bail is an interlocutory order and hence no revision would lie, it may be stated that the present case involves issues where the Court below had failed to apply its mind on certain vital and mandatory provisions of law and passed the order in total disregard of the most significant material and evidence, i.e., seizure of Ketamine Hydrochloride Injections important material and in such cases where non-application of mind and perversity are writ large, revision would be permissible as held by the Hon"ble Supreme Court in

Puran v. Rambilas and another (2001) 6 SCC 338 (2001 Cri. L.J. 2566)

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Narendra K. Amin (Dr.) v. State of Gujarat, (2008) 13 SCC 584 (AIR 2008 SC (Supp) 1939)

,

Ash Mohammad v. Shiv Raj Singh, (2012) 9 SCC 446 (2012 Cri. L.J. 4670)

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In

Puran v. Rambilas (: 2001 Cri. L.J. 2566) (supra)

, the Supreme Court observed that,

10. Mr. Lalit next submitted that once bail has been granted it should not be

cancelled unless there is evidence that the conditions of bail are being infringed. In support of this submission he relies upon the authority in the case of

Dolat Ram v. State of Haryana (1995) 1 SCC 349

. In this case it has been held that rejection of bail in a non-bailable case at the initial stage and the cancellation of bail already granted have to be considered and dealt with on different basis. It has been held that very cogent and overwhelming circumstances are necessary for an order directing the cancellation of the bail already granted. It has been held that generally speaking the grounds for cancellation of bail broadly are interference or attempt to interfere with the due course of administration of justice or evasion or attempt to evade the due course of justice or abuse of the concession granted to the accused in any manner. It is, however, to be noted that this Court has clarified that these instances are merely illustrative and not exhaustive. One such ground for cancellation of bail would be where ignoring material and evidence on record a perverse order granting bail is passed in a heinous crime of this nature and that too without giving any reasons. Such an order would be against principles of law. Interest of justice would also require that such a perverse order be set aside and bail be cancelled. It must be remembered that such offences are on the rise and have a very serious impact on the society. Therefore, an arbitrary and wrong exercise of discretion by the trial court has to be corrected.

11. Further, it is to be kept in mind that the concept of setting aside the unjustified illegal or perverse order is totally different from the concept of cancelling the bail on the ground that the accused has mis-conducted himself or because of some new facts requiring such cancellation. This position is made clear by this Court in

Gurcharan Singh v. State (Delhi Admn.) (1978) 1 SCC 118 (AIR 1978 SC 179) (1978 Cri. L.J. 129)

. In that case the Court observed as under: (SCC p. 124, para 16) (para 16 of AIR, Cri. L.J.).

If, however, a Court of Session had admitted an accused person to bail, the State has two options. It may move the Sessions Judge if certain new circumstances have arisen which were not earlier known to the State and necessarily, therefore, to that court. The State may as well approach the High Court being the superior court u/s 439(2) to commit the accused to custody. When, however, the State is aggrieved by the order of the Sessions Judge granting bail and there are no new circumstances that have cropped up except those already existing, it is futile for the State to move the Sessions Judge again and it is competent in law to move the High Court for cancellation of the bail. This position follows from the subordinate position of the Court of Session vis-a-vis the High Court.

2:

(1995) 1 SCC 349

3:

(1978) 1 SCC 118 (1978 Cri. L.J. 502)

Similarly, in

Narendra K. Amin (Dr.) v. State of Gujarat (2008) 13 SCC 584 (AIR 2008 SC (Supp) 1939)

, the Supreme Court observed that,

18. As is evident from the rival stands, one thing is clear that the parameters for grant of bail and cancellation of bail are different. There is no dispute to this position. But the question is if the trial court while granting bail acts on irrelevant materials or takes into account irrelevant materials whether bail can be cancelled. Though it was urged by learned counsel for the appellant that the aspects to be dealt with while considering the application for cancellation of bail and on appeal against the grant of bail, it was fairly accepted that there is no scope for filing an appeal against the order of grant of bail. Under the scheme of the Code the application for cancellation of bail can be filed before the Court granting the bail if it is a Court of Session or the High Court.

.....

23. Even though the re-appreciation of the evidence as done by the court granting bail is to be avoided the court dealing with an application for cancellation of bail u/s 439(2) can consider whether irrelevant materials were taken into consideration. That is so because it is not known as to what extent the irrelevant materials weighed with the court for accepting the prayer for bail.

.....

26. Once it is found that bail was granted on untenable grounds, same can be cancelled. The stand that there was no supervening circumstance has no relevance in such a case.

Referring the above referred judgments, the Supreme Court in

Ash Mohammad v. Shiv Raj Singh (2012) 9 SCC 446 (2012 Cri. L.J. 4670)

, observed that,

16. We have referred to the above authorities solely for the purpose of reiterating two conceptual principles, namely, factors that are to be taken into consideration while exercising power of admitting an accused to bail when offences are of serious nature, and the distinction between cancellation of bail because of supervening circumstances and exercise of jurisdiction in nullifying an order granting bail in an appeal when the bail order is assailed on the ground that the same is perverse or based on irrelevant considerations or founded on non-consideration of the factors which are relevant.

As regards the contention that the provisions of sections 41 , 42 and 55 of the NDPS Act have not been complied with also cannot be accepted as these have been claimed to have been complied with as reflected in the case diary. Furthermore, at this stage we are dealing with the applications for bail and not conducting a trial and if there be prima facie materials to show that these provisions had been complied with, it may not be appropriate to ignore the same and attempt to examine the evidences now with forensic precision which is usually done during trial.

The other contention regarding the wrong invocation of the High Court Code is too technical to make any difference to the outcome of the case considering the nature of the case.

The other arguments raised by the learned counsel would be also appropriate at the time of conduct of trial. Whether, the seized injections indeed contains the banned Ketamine can also be raised at the time of trial. The fact remains that a large number of packets with the label of "Ketamine Hydrochloride Injection I.P." with the name "EKTAMIN" shown were seized at the instance of the accused persons which were found hidden in the house of one of accused persons. Therefore, there was prima facie evidence relating to the seizure of psychotropic substances which, however, would require to be verified and proved at the time of trial.

Similarly, as the regards the contention that there was no evidence for conspiracy does not sound convincing. The fact remains that the seizure of "Ketamine Hydrochloride Injection I.P." was made on the disclosure made by the persons arrested earlier as mentioned above. The interrogation statements of the accused had revealed their close nexus amongst themselves and had implicated each other as evident from the case diary. Since, it was at the investigation stage it was not necessary for the Investigating Officer to prove these facts at the time of consideration of bail applications to establish conspiracy. There were sufficient materials to indicate conspiracy.

28. It may be also observed that perusal of the impugned judgment would reveal that the learned Judge had allowed the bail applications on the following considerations.

Firstly, it was held that the pseudoephedrine tablets were seized from the possession of only two persons on 24.2.2013 while carrying in the vehicle and not from other accused persons.

However, it is to be noted that all the other accused respondents were arrested on the basis of disclosures made by the two respondents arrested. The statements made by all the accused had implicated one another. Therefore, this first premise of the Learned Judge does not seem to hold much water.

Secondly, the Ld. Judge observed that mere knowledge, even discussion of a plan would not per se constitute conspiracy relying on a decision of a Supreme

Court in

Baldev Singh v. State of Punjab (: AIR 2009 SC (Supp) 1629)

, Criminal Appeal No. 533 of 2008 and held that in the present case apart from the custodial interrogation statements by two accused, there is nothing to show the conspiracy allegedly hatched by accused persons.

It may be observed that interrogation statements leading to recovery and seizure of drugs cannot be brushed aside as mere statements devoid of value for the purpose of bail consideration. The Court below was not holding a trial but considering bail applications and as such custodial statements of co-accused leading to the arrest and seizure could not be ignored as irrelevant. The approach of the Court below is, therefore, not correct. The Court below could not have considered the sufficiency or adequacy of evidence during investigation.

Thirdly, it was observed by the Ld. Judge that the drug seized pseudoephedrine tablets was a controlled substance and hence the rigours of Section 37(1)(b) , NDPS Act was not attracted.

It may be noted that whether Section 37(1)(b) of the NDPS Act was applicable or not, could not be decided by ignoring the seizure of the banned psychotropic substance. In fact in the entire impugned bail orders, there is not even a whisper of, not to mention of any discussion on the seizure of Ketamine Hydrochloride Injections which are undisputedly psychotropic substances from the house of one of the accused, namely Seikholen Haokip. Therefore, as discussed above there was non-application of mind by the Ld. Judge at the time consideration of the bail applications.

Fourthly, the learned Judge also erroneously held that the statutory period of detention as provided u/s 167(2) is 120 days and provisions of Section 36A(4) are not attracted.

Thus, this Court is of the view that the basis and premises under which the learned Judge, Special Court (NDPS) released the accused respondents on bail does not appear to be legally sound and tenable moreso, considering the serious nature of the offences of which the respondents are accused of.

Accordingly, in the facts and Circumstances of the case and for the reasons discussed above this Court is of the view that the impugned order dated 12.7.2013 passed in Cril. Misc. (B) Case No. 88-A of 2013, Cril. Misc. (B) Case No. 89-B of 2013, Cril. Misc. (B) Case No. 90-A of 2013, Cril. Misc. (B) Case No. 91-A of 2013, and common order dated 17.7.2013 passed in Cril. Misc. (B) Case No. 18 of 2013, Cril. Misc. (B) Case No. 117 of 2013, Cril. Misc. (B) Case No. 120 of 2013 dated 12.7.2013 are not sustainable and accordingly, are set aside.

In the result, these revision petitions, Crl. Revn. Petn. No. 14/2013, Crl. Revn. Petn. No. 15/2013, Crl. Revn. Petn. No. 16/2013, Crl. Revn. Petn. No. 17/2013, Crl. Revn. Petn. No. 18/2013, Crl. Revn. Petn. No. 19/2013 and Crl. Revn. Petn.

No. 20/2013 are allowed.

The matter is remanded to the Special Court (NDPS) for fresh consideration of the bail applications filed by the respondents in the light of the materials disclosed in the investigation in accordance with law and also by keeping in view the law as discussed above as expeditiously as possible. The respondents are directed surrender to custody within a period of one week from today and it shall be the responsibility of the Investigating Agency to take the respondents into custody. The bail bonds also stand cancelled. It is further directed that the bail application(s) of the respondent(s) shall be taken up for fresh consideration by the Special Court (NDPS), only after the respondent(s) surrender to custody as directed above.