



Serial No. 01
Supplementary List

HIGH COURT OF MEGHALAYA
AT SHILLONG

BA. No. 24 of 2025

Date of Decision: 30.05.2025

Shri. Rabi Debbarma,
Son of Shri. Takhirai Debbarma,
Aged about 35 years
R/o 2/4 Ramdurga Thakur Para
Laxmipur,
VTC: Purba Noabadi,
West Tripura District,
Tripura.

.....**Petitioner**

- Vs-

State of Meghalaya
Represented by the Superintendent of Police,
East Jaintia Hills District,
Khliehriat, Meghalaya.

.....**Respondent**

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioner/Appellant(s)	:	Mr. R. War, Adv.
For the Respondent(s)	:	Mr. H. Kharmih, Addl. PP with Mr. S.A. Sheikh, GA.

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| i) | Whether approved for reporting in
Law journals etc.: | Yes/No |
| ii) | Whether approved for publication | |



in press:

Yes/No

JUDGMENT AND ORDER (ORAL)

1. Heard Mr. R. War, learned counsel for the petitioner.
2. Also heard Mr. H. Kharmih, learned Addl. PP assisted by Mr. S.A. Sheikh, learned GA for the State respondent.
3. The learned counsel for the petitioner has submitted that the case of the petitioner herein is that his brother, Shri. Prodip Debbarma, who is an accused person herein was arrested along with one person namely, Shri. Shishir Debbarma while travelling in a vehicle bearing Registration No. AS 23J-0171 from Tripura and proceeding towards Shillong on 31.07.2023. However, at around 9:30 PM on the same day, they were intercepted by police personnel belonging to the ANTF (Anti Narcotic Task Force) at a place called Umtyra on the National Highway 6. Accordingly, on being so intercepted, their vehicle was searched and about 37 suspicious packets were recovered from inside the vehicle. Both the occupants of the said vehicle including the brother of the petitioner were detained by the police, since the contents of the said packets appears to be suspected contraband substance.
4. Accordingly, the police, taking cognizance of the case, on an FIR filed on 01.08.2023 by Shri. J. Myrom (MPS) Dy. SP HQ, East Jaintia Hills



District, Khliehriat, indicating the interception and seizure of the said suspected packets, wherein the suspected contraband substance is said to be marijuana (ganja). Thereafter, Khliehriat P.S. Case No. 55 (08) 2023 under Section 20(b)(ii)(C)/29 NDPS Act was registered and investigation was launched.

5. It is also the submission of the learned counsel that, in course of investigation, the seized substance was produced before the learned Judicial Magistrate First Class, East Jaintia Hills District, Khliehriat on 04.08.2023, wherein out of the 37 packets containing the alleged contraband substance, only from the packets marked as A30 and A37 were sample taken out, which proved to be positive for marijuana. On the basis of this evidence and other determining factors, the Investigating Officer had filed the charge sheet on 21.12.2023 with the opinion that a prima facie case has been found well-established against the accused person, and they are to stand trial before the competent court of jurisdiction for the said offence under the NDPS Act, which offence among others included that of Section 20(c) of the NDPS Act referring to seizure of commercial quantity of contraband substance.

6. The learned counsel further submits that at this point of time, the evidence of the prosecution witnesses has been recorded, and out of six witnesses, the recording of three witnesses have been completed.



7. The learned counsel has however submitted that the petitioner has a threefold contention in this regard, firstly, that records would show that the manner in which the sample was taken from the said seized quantity of the alleged contraband substance i.e. the 37 packets when they were produced before the learned Magistrate being kept in a bag, only two of the said packets were brought out for sampling, the same was not done in accordance with law.

8. The learned counsel has also submitted that, when the said alleged contraband substance was seized on 31.07.2023, they were produced in court only on 04.08.2023. The same not being produced immediately before the said Magistrate, there is every doubt that the contents that was produced before the learned Magistrate, may not be the same which was seized. Be that as it may, the learned counsel also submits that, since, out of 37 packets, only 2 packets were taken out for sample, which is contrary to the relevant provision of the NDPS Act i.e. Section 52A and the related Rules of 2022, which mandates that, sample has to be taken from each and every seized packets, therefore, it can be presumed that whatever has been seized, may or may not be marijuana. However, whatever has not been taken out as samples from the other 35 packets, cannot be assumed or presumed to be Marijuana.



9. The contention of the learned counsel on this issue is that, of the weight of the said alleged contraband substance taken out for sample, the same would only constitute 2.073 Kg out of the total weight of the 37 packets said to weigh about 47.157 Kg, therefore, it cannot be said that the legally seized quantity falls under commercial quantity as could be seen from Section 20(c) of the NDPS Act. Accordingly, it can be said that the accused person in question, though, not admitted, but assumed to have been caught to be in possession of an intermediate quantity of the alleged contraband substance. On this ground alone, the learned counsel has submitted that the accused person is entitled to grant of bail. In this regard, the learned counsel has cited the authority found in the case of **Wali Hasan v. State of U.P in Criminal Misc. Bail Application No. 18303/2020**, wherein vide order dated 07.06.2022 at para 13, the Hon'ble Allahabad High Court has held as follows:

“13. Considering the submissions of both the parties and keeping in mind the twin conditions of Section 37 of N.D.P.S. Act and perusing the evidence on the record, it is very much established that sampling was done contrary to the Standing Order / Instruction No.1 of 1989 dated 13.6.1989, which are mandatory in nature, as such chances of applicant conviction is weak on the basis of sampling of contraband done in the present matter as well as on the basis of the ratio of the judgment in the case of Union of India vs. Shiv Shankar Keshri (supra) larger mandate of Article 21 of the constitution of India without expressing any opinion on the merit of the case, I am of the view after applying section 37 of the N.D.P.S. act that the applicant



is entitled to be released on bail.”

10. Another authority cited is the case of **Rajan Singh v. Directorate of Revenue Intelligence in Criminal Miscellaneous Bail Application No. 16323/2023**, wherein the Hon’ble High Court of Judicature for Rajasthan Bench, Jaipur vide order dated 20.04.2024 at para 7 of the same has observed as follows:

“7. In the instant case, as per the prosecution case itself, samples were not drawn from each pouch. The samples of contraband heroin were drawn on 01.03.2023 during the certification of inventory of seized goods and thus, the arguments of counsel for the petitioner that it cannot be ascertained beyond all manner of doubt that the recovered contraband was of commercial quantity is worth considering. It was imperative for the seizure officer to draw samples from each pouch in pursuance of the Rules of 2022.”

11. The next contention of the learned counsel is that the accused person was incarcerated in custody for almost 2(two) years, and for the delay in the trial, his personal liberty as guaranteed under Article 21 of the Constitution of India, should not be trampled even, if the rigors of Section 37 of the NDPS Act is applicable to his case. As has been submitted, having been in custody for a long period of time, the accused person in question may be enlarged on bail.

12. Another contention put forth by the learned counsel is that the accused person in question has no criminal antecedent, and having to take



care of his wife and minor child, he may therefore be allowed to be enlarged on bail with any conditions as deemed fit and proper to be imposed by this Court.

13. Per contra, Mr. H. Kharmih, learned Addl. PP has strongly opposed the prayer made by the learned counsel for the petitioner on the ground that records would show that, the brother of the petitioner being one of the occupants of the said vehicle which was intercepted from which the said 37 packets of contraband goods i.e. marijuana have been seized, is very much aware of the presence of such contraband substance in the vehicle. This was clearly indicated in his statement before the authorities taken under Section 67 of the NDPS Act. Accordingly, being in conscious possession of the said contraband substance, he may not be enlarged on bail on this count. As far as the delay in the trial is concerned, the learned Addl. PP has submitted that the charge sheet being filed on 21.12.2023, and charges framed on 09.04.2024, and as has been submitted by the learned counsel for the petitioner that three of the six witnesses have already been examined and discharged, therefore, there is no question of delay in the trial and this Court may allow the trial to proceed in its normal course.

14. As to the antecedent of the accused person in question, the learned Addl. PP has submitted that the Investigating Officer, during



investigation, has also obtained crucial information as regard the vehicle they were travelling in, inasmuch as, it has been found out that the accused person and the other occupant were using a vehicle with a fake registration number when, actually, on investigation, it was found that the said vehicle is actually a vehicle registered in the State of Bihar with Registration No. BR01BS 2941 belonging to one Shri. Vikash Kumar, who has since sold the vehicle to one Shri. Uttam Kumar. Therefore, under such circumstances, the antecedent of the accused person in question is doubtful. As such, it is the prayer of the learned Addl. PP that the prayer made in this petition may not be allowed.

15. This Court has given careful consideration to the submission made by the learned counsel for the parties. On the contention of the learned counsel for the petitioner as regard the defective process carried out in course of taking samples of the seized contraband substance, which initially were said to weigh about 47.157 Kg, samples of which were taken from only 2 packets, the said 2 packets weighing about 2.073 Kg, therefore, on this ground alone, the prosecution may not be able to sustain its case at the trial, and accordingly, the accused person is entitled to be granted bail.

16. This Court would say that the case is still under trial with three witnesses yet to be examined, therefore, at this point of time, it may not be safe to come to any conclusion as to the strength or weakness of the



prosecution case, vis-à-vis, the strength or weakness of the case of the defence including the accused person in question. That is a matter to be left to the Trial Court, who would consider the body of evidence at the conclusion of the trial. It is also to be reminded that, even, if the rigors of Section 37 of the Act is not to be taken into account in this particular case, yet bail is still within the discretionary realm of the court.

17. Therefore, this Court is of the considered opinion that, though, the authorities cited by the petitioner are relevant to the subject matter, however, the same cannot be made the basis for grant of bail.

18. As to the contention that the accused person in question has been incarcerated in custody for a prolonged period of time, if the period of 2 years or so is taken into account, the same may be true, however, taking into consideration the fact that the trial has proceeded in its normal course, no delay could be attributed to the Trial Court. As such, on this ground too, this Court is not inclined to allow the prayer of the petitioner.

19. As regard the issue of antecedent of the accused person in question, it may be true that he has no criminal record so far, but that in itself, would not qualify him to be enlarged on bail. Even, if this Court has chosen to ignore the submission of the learned Addl. PP as regard the complicity of the accused person in question pertaining to the used of a vehicle with fake



registration number which would be a matter for the prosecution to pursue independently, the fact that the accused person is involved in a case relating to contraband substance, be it marijuana, heroin or other dangerous substance, the offence would qualify as a serious one, the gravity of which has to be taken note of by this Court. Also not being a resident of this State as apparently from the records, it is presumed that he is a resident of the State of Tripura, therefore, the fact that he may be a flight risk, cannot be ruled out.

20. In view of the above noted observations, this Court is not inclined to allow the prayer made in this petition at this point of time. The same is accordingly rejected.

21. Before parting, the Trial Court is requested to ensure that the trial is completed as expeditiously as possible.

Judge