

ORDER SHEET

Court of : Special Judge (NDPS), Shillong

Present : Shri. E. Kharumnuid

Bail Petition No. 131 (H) 2020
Sadar P.S. Case No. 47 (2) 2020
Under Section 21 (b) of NDPS Act
State

-Versus-

Shri. Khir Bahadur Tamang

Date of order of Proceeding	Order	Signature
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16.07.2020

- 1) Peruse Bail application No. 131 (H) 2020, U/S 439 Cr.P.C., R/w Section 37 of NDPS Act, filed by the petitioner Smti. Susanna Lyngdoh, wife of Shri. Khir Bahadur Tamang, resident of House No. 112, Lumpyllon, Madanrting, Shillong, moved by Ld. Counsel Shri. Netra Kumar Rai on behalf of the accused persons Shri. Khir Bahadur Tamang.
- 2) Prosecution is represented by Ld. P.P., Shri. S.S. Das.
- 3) Matter was taken up through V/C.
- 4) Ld. Counsel Shri. Netra Kumar Rai submits that the accused persons was arrested on 10.02.2020 in connection with Sadar P.S. Case No. 47 (2) 2020, Under Section 21 (b) of NDPS Act and languishing in judicial custody for more than 5 months.
- 5) Ld. Counsel further submits that the investigation of the instant case is complete and the Investigating Officer has already filed the Charge Sheet bearing Charge Sheet No. 16 of 2020 on 27.04.2020 and as such further detention of the accused person for the purpose of investigation is not warranted.
- 6) Ld. Counsel also submits that due to prevailing COVID 19 pandemic it may take some time for proper trial to commence.

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Hence, prayed to enlarge the accused person on bail on any condition(s) imposed by the Court.

- 7) On the other hand, Shri. S.S. Das, Ld. Public Prosecutor, have no objection for grant of bail to the accused person.
- 8) On perusal of the record, it is seen that the accused person was arrested on 10.02.2020 and in custody till date and Charge-sheeted against the accused person vide C.S. No. 16/2020 dated 27.04.2020, for seizure of contraband weighing 43.34 gms which falls under intermediate quantity, but till date FSL report have not reached this court.
- 9) It is also found that the FSL is not annexed with the Charge Sheet and found that the I/O in his Charge Sheet has stated that FSL report has not yet received from the FSL, Shillong and further submits that supplementary Charge Sheet will be submitted alongwith the FSL report.
- 10) From the above Charge Sheet submitted by the I/O it is clear that the accused person is in custody for more than 5 months, but till date FSL report has not reached this court nor any steps taken in respect of the pending FSL report. Further, in the absence of Chemical Analysis Report the Charge sheet submitted by the I/O cannot be considered to be completed charge sheet.
- 11) In the absence of FSL report, this Court cannot proceed with the case as the Chemical Analysis Report is a vital document to ascertain the quality and quantity of the seized contraband and as such without trial it is not justified to remand the accused person on every production date on a Mechanical manner.
- 12) This court is of the opinion that it is difficult for the court to come to the conclusion that the seized article is a contraband article and it cannot be analyze as to what is the quantity and quality of the contraband.
- 13) This court is aware of the stringent provision of the NDPS Act, but at the same time is also concerned with the liberty of a person and as such Investigating Agency has to strictly follow the Law as provided by the NDPS Act particularly the mandate of Standing Instruction Number 1/88 of the Narcotic Control Bureau as required by Law which enumerates that the analysis of the Contraband Article has to be completed within 15 days from the date of receipt of the same and the quantitative analysis also has to be completed within 15 days thereafter.

- 14) Considering the submission of the Ld. Counsel appearing for the parties and the material available on record and in view of the above observation, this court is of the considered opinion that the accused person is entitle to be enlarge on bail. Hence, without going into the merit of the case, I am inclined to enlarged the accused person Shri. Khir Bahadur Tamang on bail for a bail amount of Rs.2,00,000/- with two reliable sureties of the like amount on the condition(s);
- i) *That the accused person shall appear before the court on every date fixed;*
 - ii) *That the accused person shall not commit an offence similar to the offence of which he is accused, or suspected, of the commission of which he is suspected;*
 - iii) *That the accused person shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the court or to any police officer or tamper with the evidence.*
 - iv) *That the accused person shall not leave jurisdiction of this court without prior permission of the Court;*
- 15) Failure to comply with the above condition(s) bail granted shall automatically stands cancelled.
- 16) With the above observation the instant bail application is allowed and accordingly stands disposed off.

Sd/-
Special Judge (NDPS)
East Khasi Hills District
Shillong