

**The State of Meghalaya**

v.

**Lalrintluanga Sailo & Anr.**

(Special Leave to Appeal (Crl.) No. 16021 of 2023)

16 July 2024

**[C.T. Ravikumar and Prashant Kumar Mishra, JJ.]**

**Issue for Consideration**

Whether the High Court erred in granting bail to the accused solely on the ground that she was suffering from HIV, without adverting to the mandate under Section 37(1)(b)(ii), NDPS Act, and without taking in view the quantity of the contraband substance.

**Headnotes<sup>†</sup>**

**Bail – Narcotic Drugs and Psychotropic Substances Act, 1985 – s.37 – Recording a finding mandated u/s.37 is *sine qua non* for granting bail to accused under the Act – High Court erred in granting bail to accused solely on the ground that she was suffering from HIV, without adverting to the mandate u/s.37(1)(b)(ii), when accused was involved in offences under the Act on more than one occasion and quantity of contraband was much above the commercial quantity.**

**Narcotic Drugs and Psychotropic Substances Act, 1985 – s.37 – Grant of bail to accused involved in offence under the Act – Twin conditions u/s.37(1)(b)(ii):**

**Held:** While considering the application for bail made by an accused involved in an offence under NDPS Act, a liberal approach ignoring the mandate under Section 37 of the NDPS Act is impermissible – Recording a finding mandated under Section 37 of the NDPS Act is *sine qua non* for granting bail to an accused under the NDPS Act – When the accused is involved in offences u/ss. 21(c)/29 of NDPS Act, on more than one occasion and when the quantity of the contraband substance viz., heroin is 1.040 Kgs, much above the commercial quantity, then the non-consideration of the provisions under Section 37, NDPS Act, has to be taken as a very serious lapse – Twin conditions under s.37 of NDPS Act, were not satisfied and on the sole reason that the accused was a HIV patient, she is not entitled to be released on bail – However, accused being HIV positive, is entitled to benefit u/s.34(2) of the

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Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome (Prevention and Control) Act, 2017 – In view thereof the trial Court to take appropriate steps to expedite the trial on priority basis. [Paras 8,10,12,13]

**Case Law Cited**

*Collector of Customs, New Delhi v. Ahmadalieva Nodira* [\*\*\[2004\] 2 SCR 1092\*\*](#) : (2004) 3 SCC 549; *State of Kerala and Ors. v. Rajesh and Ors.* [\*\*\[2020\] 3 SCR 348\*\*](#) : (2020) 12 SCC 122 – relied on.

*Bhawani Singh v. State of Rajasthan*, 2022 SCC OnLine SC 1991 – distinguished.

**List of Acts**

Narcotic Drugs and Psychotropic Substances Act, 1985; Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome (Prevention and Control) Act, 2017; Code of Criminal Procedure, 1973.

**List of Keywords**

Bail; NDPS Act; Twin conditions; Contraband substance; Heroin; Commercial quantity; Accused suffering from HIV; Bail granted on solitary ground of HIV positive; Non-consideration of provisions under Section 37 NDPS Act.

**Case Arising From**

CRIMINAL APPELLATE JURISDICTION: Special Leave To Appeal (Crl.) No. 16021 of 2023

From the Judgment and Order dated 29.09.2023 of the High Court of Meghalaya at Shillong in BA No. 38 of 2023

**Appearances for Parties**

Amit Kumar, Sr. Adv., Avijit Mani Tripathi, Ms. Rekha Bakshi, T.K. Nayak, Ms. Marbiang Khongwir, Advs. for the Petitioner.

**Judgment / Order of the Supreme Court****Order**

1. The State of Meghalaya filed the captioned Special Leave Petition challenging the order dated 29.09.2023 passed in Bail Application No. 38/2023 by the High Court of Meghalaya at Shillong.

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2. FIR No.06(02)23 was registered against the respondent-accused (Smt. X) on 08.02.2023 for offences under Sections 21(c)/29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act'). Anonymization as relates the identity of the respondent-accused as 'Smt.X' has been done, as she is Human Immunodeficiency Virus (HIV) positive. Virtually, from 16.03.2023 onwards, Smt. X was in judicial custody in connection with the crime bearing FIR No.22(03)2023 registered at Khliehriat Police Station under Sections 21(c)/29 of the NDPS Act and her formal arrest in the subject Crime was recorded on 11.04.2023 during such custody. While so, as per the order dated 27.06.2023, the High Court of Meghalaya at Shillong granted bail in connection with FIR No.22(03)2023 on the solitary ground of her being HIV positive.
3. It is the subsequent grant of bail on 29.09.2023 in connection with FIR No.06(02)23, *sans* satisfactory consideration of the twin conditions under Section 37(1)(b)(ii) of the NDPS Act that constrained the State to approach this Court with the captioned Special Leave Petition. As a matter of fact, the bail application that culminated in the said order dated 29.09.2023 was moved by the son of the accused-Smt.X, on her behalf.
4. Heard learned Advocate General Shri Amit Kumar for the State of Meghalaya. Earlier, notice was issued to the respondents and despite being served respondent No.1, the son of Smt. X, through whom B.A. No.38/2023 which culminated in the impugned order was moved, did not enter appearance. Later, bailable warrant was issued against the Smt.X. The report annexed to the office report would reveal that bailable warrant was executed on 02.07.2024 and Smt.X was released on bail with the instructions to appear before this Court on 16.07.2024 at 10.30 a.m. However, the respondent-accused failed to appear before the Court when this matter was taken up for consideration. In this context, it is to be noted that in the order impugned dated 29.09.2023, whereby Smt. X was granted bail, itself one of the conditions is that she should co-operate with the process of the court concerned. Be that as it may, we will now proceed to consider the challenge against the order dated 29.09.2023.
5. There cannot be any doubt with respect to the position that in cases involving commercial quantity of narcotic drugs or psychotropic substances, while considering the application of bail, the Court is

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bound to ensure the satisfaction of conditions under Section 37(1) (b)(ii) of the NDPS Act. The said provision reads thus: -

*"37(1)(b)(ii)- where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail."*

6. While considering the cases under NDPS Act, one cannot be oblivious of the objects and reasons for bringing the said enactment after repealing the then existing laws relating to the Narcotic drugs. The object and reasons given in the acts itself reads thus: -

*"An act to consolidate and amend the law relating to narcotic drugs, to make stringent provisions for the control and regulation of operations relating to narcotic drugs and psychotropic substances, to provide for the forfeiture of property derived from, or used in, illicit traffic in narcotic drugs and psychotropic substances, to implement the provisions of the International Convention on Narcotic Drugs and Psychotropic Substances and for matters connected therewith."*

In the decision in *Collector of Customs, New Delhi v. Ahmadalieva Nodira*,<sup>1</sup> the three judge bench of this Court considered the provisions under Section 37(1)(b) as also 37(1)(b)(ii) of the NDPS Act, with regard to the expression "reasonable grounds" used therein. This Court held that it means something more than the *prima facie* grounds and that it contemplates substantial and probable causes for believing that the accused is not guilty of the alleged offence. Furthermore, it was held that the reasonable belief contemplated in the provision would require existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence.

As relates the twin conditions under Section 37(1)(b)(ii) of the NDPS Act, viz., that, firstly, there are reasonable grounds for believing that the accused is not guilty of such offence and, secondly, he is not likely to commit any offence while on bail it was held therein that

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they are cumulative and not alternative. Satisfaction of existence of those twin conditions had to be based on the 'reasonable grounds', as referred above.

7. In the decision in *State of Kerala and Ors. v. Rajesh and Ors.*,<sup>2</sup> after reiterating the broad parameters laid down by this Court to be followed while considering an application for bail moved by an accused involved in offences under the NDPS Act, in paragraph 18 thereof this Court held that the scheme of Section 37 of the NDPS Act would reveal that the exercise of power to grant bail in such cases is not only subject to the limitations contained under Section 439 of the Code of Criminal Procedure, but also subject to the limitation placed by Section 37(1)(b)(ii), NDPS Act. Further it was held that in case one of the two conditions thereunder is not satisfied the ban for granting bail would operate.
8. Thus, the provisions under Section 37(1)(b)(ii) of the NDPS Act and the decisions referred *supra* revealing the consistent view of this Court that while considering the application for bail made by an accused involved in an offence under NDPS Act a liberal approach ignoring the mandate under Section 37 of the NDPS Act is impermissible. Recording a finding mandated under Section 37 of the NDPS Act, which is *sine qua non* for granting bail to an accused under the NDPS Act cannot be avoided while passing orders on such applications.
9. The materials on record would reveal that earlier Smt. X was enlarged on bail by the High Court as per order dated 27.06.2023 in connection with FIR No.22(03)2023, involving the quantity of 55.68 grams of Heroin, despite the opposition of the public prosecutor, taking note of her being HIV positive. In the said order it is stated thus: -

*"30. Accordingly, on this ground alone, the application for grant of bail is hereby allowed."*
10. The subject FIR viz., FIR No. 06(02)23 under Section(s) 21(c)/29 of the NDPS Act, would reveal that the quantity of the contraband involved is 1.040 kgs of heroin. The impugned order granting bail to accused-Smt. X, dated 29.09.2023 would reveal, this time also, the bail was granted on the ground that she is suffering from HIV and conspicuously, without adverting to the mandate under Section

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37(1)(b)(ii), NDPS Act, even after taking note of the fact that the rigour of Section 37, NDPS Act, calls for consideration in view of the involvement of commercial quantity of the contraband substance. When the accused is involved in offences under Section 21(c)/29 of NDPS Act, more than one occasion and when the quantity of the contraband substance viz., heroin is 1.040 Kgs, much above the commercial quantity, then the non-consideration of the provisions under Section 37, NDPS Act, has to be taken as a very serious lapse. In cases of like nature, granting bail solely on the ground mentioned, relying on the decision in **Bhawani Singh v. State of Rajasthan**<sup>3</sup> would not only go against the spirit of the said decision but also would give a wrong message to the society that being a patient of such a disease is a license to indulge in such serious offences with impunity. In the contextual situation it is to be noted that in **Bhawani Singh's** case the offence(s) involved was not one under the NDPS Act. We have no hesitation to say that in the above circumstances it can only be held that the twin conditions under Section 37 of the NDPS Act, are not satisfied and on the sole reason that the accused is a HIV patient, cannot be a reason to enlarge her on bail. Since the impugned order was passed without adhering to the said provision and in view of the rigour thereunder the accused-Smt.X is not entitled to be released on bail, the impugned order invites interference.

11. Consequently, the impugned order is set aside. The accused-Smt.X shall surrender before the trial Court within a week from today and in case of her failure to do so, she shall be taken into custody in accordance with law. Upon such surrender/production of the accused before the trial Court, it shall cancel the bail bond of the accused and discharge the sureties.
12. In view of the indisputable fact that Smt. X is HIV positive she is entitled to the benefit under Section 34(2) of the Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome (Prevention and Control) Act, 2017, which reads thus: -

“34. ...

...

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*(2). In any legal proceeding concerning or relating to an HIV-positive person, the court shall take up and dispose of the proceeding on priority basis."*

13. In view of the said provision the trial Court shall take appropriate steps to expedite the trial on priority basis and to dispose of the case as early as possible.
14. The Special Leave Petition is disposed of, as above.
15. Pending application(s), if any, stands disposed of.

*Result of the case:* Special Leave Petition disposed of.

<sup>†</sup>*Headnotes prepared by:* Bibhuti Bhushan Bose  
*(With assistance from:* Geethika. K, LCRA)