

**IN THE HIGH COURT OF MANIPUR
AT IMPHAL**

BAIL APPLICATION NO. 16 OF 2024

Shri Bhadresh Kr. Patel, aged about 51 years, s/o
Subhashbhai Patel, R/o, 3-147 Patelfaliyua, Avakhal
– 2, Vadodara, Gujarat – 391250.

.... Petitioner

- Versus -

The Union of India represented by the Narcotics Control
Bureau (NCB), through its Intelligence Officer, Narcotics
Control Bureau (NCB), CPWD Quarters, Changangei
Kongba Uchekon, Imphal West, Manipur – 795008.

.... Respondent

B E F O R E
HON'BLE MRS. JUSTICE GOLMEI GAIPHULSHILLU

For the petitioner : Mr. T. Momo, Senior Advocate assisted by
Mr. Ph. Niranjay, Advocate
For the respondent : Mr. W. Darakishwor, Senior Advocate
Date of hearing : 18.10.2024
Date of judgment &
order : **13.12.2024**

JUDGMENT & ORDER
(CAV)

[1] Heard Mr. T. Momo, learned senior counsel assisted by Mr. Ph. Niranjay, Advocate appearing for the petitioner and Mr. W. Darakishwor, learned senior counsel appearing for the respondent.

[2] The present application has been filed under Section 439 of the Cr.P.C. 1973 read with Section 37 of the Narcotic Drugs & Psychotropic Substances Act, 1985 with the following prayer:

- (i) To pass an order for enlarging the petitioner/accused person on bail in connection with the Special Trial Case No. 26 of 2023 with reference to NCB Crime No. 02/NCB/Imp/2024 dated 03.03.2024 U/S 8(c) & 9A r/w S.21(c), 25A, 25 & 29 of the ND & PS Act, 1985, which is pending before the Ld. Special Court (ND & PS), Manipur.
- (ii) To pass any further order or any appropriate order/direction in the facts and circumstances of the case.

[3] Brief facts of the present case are that the petitioner, who is a father of 1(one) child and also taking care of his wife and ailing mother aged about 77 years, is sole proprietor of M/s Recover Healthcare Ltd. which is in operation since 2002 dealing in pharmaceutical products and a resident of Vadodara Gujarat.

[4] The petitioner was arrested on 10.05.2023 by NCB officer and formally arrest memo thereof was also issued to him. Since then, he has been in judicial custody till date. On 03.07.2023, in connection with the NCB Crime No. 02/NCB/Imp/2023 dt. 03-03-2023 U/S 8(c) & 9A r/w S.21(c), 25A, 25 & 29 of the ND & PS Act, 1985, the I.O. of the case had submitted charge sheet before the Special Judge (ND & PS), Imphal West, Manipur.

In the charge sheet, it has been alleged that the petitioner supplied 1500 (one thousand and five hundred) packets of Pseudoephedrine tablets; out of which, 533 (five hundred and thirty three) packets were seized by the NCB team on 03.03.2023 from the premises of Jangminthang Guite. He supplied the said tablets to other accused namely, Abdul Wakil without any valid drug license using fake authorization of Elite Medical Store, Aizawl, Mizoram in the name of drug "Cetirizine HCL 10 mg (Levocet)"; for which, the petitioner received a sum of Rs. 11.68 lakhs in his account at Bank of Baroda. In connivance with other accused namely, Harshal Desai, Director of Ardros Drugs Pvt. Ltd., Tapi, Gujarat, the petitioner received a consignment of the said tablets in the brand name of "Phifed" tablets and the bill was generated in the name of "Admos SR" upon instructions of the said Abdul Wakil.

It was also alleged that during search of the office-cum-godown of the petitioner on 09.05.2023, well prepared fake labels of "Cetirizine HCL 10 mg" tablets manufactured by the Sunview Biotech

were recovered which were similar in nature found affixed onto the seized 533 packets of Pseudoephedrine tablets by the NCB team on 03.03.2023 and the search-cum-seizure list was prepared on the same day.

[5] The petitioner filed a case being Special Trial Case No. 26 of 2023 before the Special Judge (ND & PS), Imphal West, Manipur at Lamphelpat. While pending the case for charge hearing before the Court, since the petitioner had health issues/problems, he had filed a bail application being Cril. Misc(B) Case No. 209 of 2023 (Ref. : S.T. Case No. 26 of 2023) before the same Court for releasing on bail on medical ground. However, vide order dated 12.09.2023 (**Annexure – A/3**), the said bail application was rejected. The operative portions of the order are extracted hereunder:

- "10. Perused materials on record including the Search cum Seizure list, statement of witness so far recorded, etc. At this stage, there exists no such facts and circumstances on record that are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offences or no reasonable grounds to believe that the accused is not guilty of the said offences. There is also nothing to show that the accused is not likely to commit any similar offence while on bail.*
- 11. In view of the above said health status report of the accused, having regard to the relevant considerations including seriousness of the alleged offences and the stage of the case being at charge hearing, I am not inclined to release the accused on bail.*
- 12. Therefore, the application is rejected and stands disposed of."*

[6] Since the petitioner had continued to suffer from multiple health issues/problems and the jail authority was unable to provide proper medical attention to him, he had filed another bail application being Cril. Misc.(B) Case No. 261 of 2023 (Ref.: S.T. Case No. 26 of 2023) before the Ld. Special Judge (ND & PS), Manipur at Lamphelpat praying for releasing him on bail (**Annexure – A/4**).

[7] Further, he had filed a case being Cril. Misc. Case No. 154 of 2023 (Ref.: Cril. Misc. (B) Case No. 261 of 2023 in S.T. Case No. 26 of 2023) before the same Court with the prayer for releasing him on bail pending trial of referred case, coupled with prayer for calling medical report from the Superintendent, Manipur Central Jail, Sajiwa (**Annexure – A/5**). Vide order dated 17.11.2023 (**Annexure – A/6**), the Ld. Special Judge (ND & PS) passed the following order:

"As above, the S.P. Jail, Sajiwa is directed to get the accused/petitioner medically examined and submit the health status report on 22-11-2023.

Fix 22-11-2023 for report and hearing.

Send a copy of this order to the S.P., Manipur Central Jail, Sajiwa.

Petitioner is to take steps."

As per the order dated 17.11.2023, the medical report dated 22.11.2023 was filed before the Ld. Special Judge (ND & PS), Manipur at Lamphelpat (**Annexure – A/7**).

[8] Vide order dated 07.12.2023 (**Annexure – A/8**), the Ld. Special Judge (ND & PS), Manipur praying for releasing on bail rejected the bail application being Cril. Misc.(B) Case No. 261 of 2023

(Ref.: S.T. Case No. 26 of 2023). The operative portions of the said order are extracted as follows:

- "8. *On perusal of the materials on record, at this stage, there exists no such facts and circumstances on record that are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offences or no reasonable grounds to believe that the accused is not guilty of the said offences. There is also nothing to show that the accused is not likely to commit any similar offence while on bail.*
9. *In view of the above statement of said Dr. M. Amarjit Singh, Medical Officer of MCJ, Sajiwa in c/w the health status report of the accused, having regard to all the relevant considerations including seriousness of the alleged offences and the stage of the case, I am not inclined to release the accused on bail.*
10. *The SP, Manipur Central Jail, Sajiwa is hereby informed to provide all the necessary and proper medical facilities (including MRI, Colonoscopy and Endoscopy) to the accused at the earliest and submit a report in this regard on or before 15/12/2023.*
11. *Therefore, the application for bail is rejected and stands disposed of.*
12. *Copy of this order be sent to the S.P., Manipur Central Jail Sajiwa for information and necessary steps."*

As per the order dated 07.12.2023, the S.P., Manipur Central Jail Sajiwa wrote a letter dated 14.12.2023 to the Ld. Special Judge (ND & PS), Manipur mentioning that the medical report could not be submitted timely since the medical investigation report done in JNIMS have not been received by his office and therefore, requested to submit the same on another date after receiving the report from the JNIMS.

[9] However, the medical report has not been given to the petitioner and no report has also been submitted before the Ld. Special Judge (ND & PS), Manipur till date by the S.P., Manipur

Central Jail, Sajiwa. Accordingly, the present bail application has been filed under the following grounds:

(i) The petitioner is under trial prisoner and his detention in jail for an indefinite period violates Article 21 of the Constitution of India. Every person detained or arrested in jail is entitled to get speedy trial. It is settled law that bail is the rule and jail an exception and that the refusal of bail is a restriction on the personal liberty of the individual guaranteed under Article 21 of the Constitution of India.

(ii) Detention of the petitioner in jail will not serve any useful purpose as the investigating authority already submitted the charge sheet before the Ld. Special Judge (ND & PS), Manipur at Lamphelpat after completion of the investigation and no charge has been framed against the petitioner till date and the proceedings of the present trial case has been adjourned without framing of charges.

(iii) There is no prima facie case against the petitioner from the evidence and the documents produced by the prosecution.

(iv) Nothing incriminating or contraband has ever been found from the premises of the petitioner. The allegation in the charge sheet against the petitioner is

that during the search of the office-cum-godown of the petitioner on 09.05.2023, the fake labels of "Citrazine HCL 10 mg tablet" manufactured by the Sunview Biotech was recovered which were similar in nature found affixed onto the seized 533 packets of Pseudoephedrine tablets by the NCB team on 03.03.2023. The said materials found and seized from the house premises of Jangminthang Guite who is a resident of Moreh, Manipur, which has no any nexus with the petitioner, who is a resident of Gujarat.

(v) The petitioner has nothing to do with the alleged offence in connection with the charge sheet of the Sp. Trial (NDPS) Case No. 26 of 2023 and since the arrest till date, the petitioner has been cooperating with the I.O. of the case.

(vi) Since the material seized is neither narcotic drug nor psychotropic substance, the classification of small quantity, moderate quantity and commercial quantity etc. would not be applicable to the present case.

(vii) The petitioner has many health issues/problems and furthermore, he is the sole bread earner of his family.

(viii) Even though the Ld. Special Judge (ND & PS), Manipur vide order dated 07.12.2023 directed the S.P., Manipur Central Jail Sajiwa to provide the necessary and proper medical facilities to the petitioner and submit a medical report in that regard on or before 15.12.2023, no report has been submitted by the S.P., Manipur Central Jail Sajiwa till date.

(ix) The Ld. Special Judge (ND & PS), Manipur, vide its order dated 07.12.2023, has not given any cogent reasons for rejecting the bail application of the petitioner. The said order is cryptic and is devoid of any reasons for rejecting the bail application.

[10] Counter affidavit has been filed on behalf of the respondent wherein grounds for rejection of the bail application have been mentioned as follows:

i) The accused Md. Abdul Wakil came in contact with Bhadresh Patel through his staff Anil Nayaka through B2B business platform that is Tradeindia and made a deal of purchasing 15 lakh tablets of Pseudoephedrine Hydrochloride in the month of January 2023. On 19.01.2023 Bhadresh Kumar Patel received a consignment of 15 lakh tablets (without label) in the billing of Admos SR from M/s Ardor Drugs Pvt. Ltd which is a manufacturer located at Vankhel, Songadh Ukai road, Songadh, Gujarat by carrying one tempo driven by Vipul Batt. Thereafter Bhadresh Patel directed Nitin Kr. Panchal to receive the consignment on 19.01.2023 at

M/s Recover Healthcare godown in assistance with Anil Bhai Nayaka and also instructed them to put the labeling of Citrizine HCl (Levocet) tablets which actually contained Pseudoephedrine tablets on each of the 1500 packets of loosed tablets in plastic packets for further dispatched to Abdul Wakil.

ii) On the demand of Abdul Wakil, Bhadrash Kumar has given 1500 packets of Pseudoephedrine tablets weighing more than 300 kg of Pseudoephedrine tablets in 26 cartoon boxes on 31.01.2023 which was booked in Giri Cargo on Sanand road. Ahmedabad on 31.01.2023. By showing them fake label of Triprolidine HCl tablets (Colzen) as per plan and get it affixed on the consignment of Pseudoephedrine tablets. However when Abdul Wakil hinted Bhadrash Patel that it would be difficult to transport the tablets in the name of Pseudoephedrine tablets and as per suggestion of Abdul Wakil, Bhadrash Patel arranged labels of such drugs which do not contain Pseudoephedrine salt. Hence Bhadrash Kumar Patel arranged from one Kalpan Modi who runs a shop in the name of Intergraph at Sola Bhuyang Dev. Ahmedabad to design labels of Cetrizine Hydrochloride tablets 10 mg (Levocet) and later on affixed on all the 1500 packets of Pseudoephedrine tablets by two of M/s Recover Healthcare employees namely Nitin Kr. Panchal and Anil Nayaka in the godown of M/s Recover Healthcare own by Bhadrash Patel. Further Abdul Wakil made a payment of Rs 11.68 lakh to Bhadrash Patel's bank account no. 03320100399 of Kalapur Commercial Co-op Bank Ltd. in between 27.01.2023 to 02.02.2023.

iii) Bhadresh Kumar Patel revealed that M/S Recover Healthcare has received 1500 packets of Phifed tablets which delivered by M/s Ardor Drugs Pvt. Ltd on the billing of Admos SR on 19.01.2023 that was manufactured by M/s Ardor Drugs Pvt. Ltd. owned by the accused Harshal Desai who is working in consultation with the accused Mehul Desai in supplying the seized Pseudoephedrine and Tramadol based pharmaceuticals tablets under different brand names such as Phifed, Asifed, Admos SR etc and sold out more than 1 crore Phifed tablets containing Pseudoephedrine salt to M/S Recover Health care.

iv) Bhadresh Patel has also admitted in his statement that Harshal Desai used to generate Tax Invoices in the name of M/s Recover Healthcare but the products mentioned in the Tax Invoices used to be supplied to some other parties. Sometimes Harshal Desai used to generate false bills with the name of some other products for supply of Pseudoephedrine based tablets to Bhadresh Patel to sell the said Pseudoephedrine tablets. For the said purpose Harshal Desai paid Rs. 10 lakh (i.e. @ Rs. 1 for 10 tabs of pseudoephedrine) as commission to Bhadresh Patel, which is reflected in the bank account statement of Kalupur Commercial Co-operative Bank of M/s Recover Healthcare own by Bhadresh Patel. Since Ardor Drugs Pvt. Ltd., is a manufacturing company hence Rs 10 lakh might have been credited to company's bank account but here amount has been paid from the company's bank account to M/s Recover Healthcare bank account which is something not generally practice. Further Bhadresh Patel and Harshal Desai also admitted the fact

that said Rs 10 lakh was commission paid to Bhadresh Patel for generating fake bills/invoices in the name of M/s Recover Healthcare. Here also in the present bail petition, nothing proper justification has been given by the petitioner.

v) The accused Abdul Wakil also corroborated in his statement that he procured the consignment of 1500 packets of Pseudoephedrine tablets from M/s Recovery Healthcare Ahmedabad through accused Bradesh Kumar Patel in association with his other two staffs/employee of M/S Recover Health Care namely Nitin Kr. Panchal and Anil Bhai Nayaka.

vi) During investigation, CDRs of mobile number of Bhadresh Patel/Abdul Wakil, Bhadresh Patel Anil Nayaka and Bhadresh Patel/Harshal Desai were also analyzed which clearly indicates that they were in regular touch during the process of delivery of the consignment of Pseudoephedrine tablets. (Copy of CDR analysis of Bhadresh Patel has already been submitted at Final Complaint dated 03.07.2023 of pages no. 363 and additional/supplementary complaint dated 03.10.2023.

vii) During the search of the office/godown premises of M/s Recover Healthcare in Ahmedabad, fake labels of Levocet Cetrizine Hydrochloride 10 mg was recovered and seized also. It is pertinent to mention that same labels were also found on the seized 533 packets of Pseudoephedrine tablets which clearly establish the linkage of seized tablets with Bhadresh Patel and his firm Recover Healthcare, Ahmedabad.

viii) During investigation it was also found that, it was Bhadresh Patel who made the arrangement of stay of Abdul Wakil when he reached to Ahmedabad in

January 2023 for the deal of Pseudoephedrine tablets. All these facts have been corroborated in the statements of his two of the staff Nitin Panchal and Anil Nayaka who were also found indulged in the present crime along with Bhadresh Patel.

ix) There is adequate piece of evidence available with the prosecution which indicates the key role of accused. There are still various facts which are to be corroborated to ascertain the further linkage or the source of the seized 110.5 kg of Pseudoephedrine tablets, which will not be possible if the accused is granted bail at this juncture.

x) The forensic examination report no. CFSL(KR)/627/NAR/32/23 dated 26.10.2023 was received from Guwahati which gave positive test or result as given: Diacetyl morphine (heroin), Morphine-3-acetate, 6- Monoacetylmorphine and Acetylcodein have been detected in Exhibit-A and Pseudoephedrine has been detected in Exhibit-B. (The chemical test report has already been submitted in separate supplementary petition dated 09.11.2023 through SPP, NCB). The chemical test report has proven and completed the prosecution justification that all the accused are involved in illegal trade/business which also clearly indicates the huge conspiracy made on the diversion of the Pseudoephedrine tablets meant for trafficking and manufacturing of Methamphetamine (ATS), a banned drug.

xi Further proclamation issued against wanted suspect namely, Ms. Sultani, Sh. Jaminthang Guite and Ms. Hawlemneng Guite u/s 82 of the NDPS has been published/flushed in local newspaper on 14.04.2024 and

15.04.2024 and accordingly the Special NDPS court, Lamphel is taking up action in continuing with the trail and proceeding of the case.

xii) The accused, in the present case, Harshal Desai and Mehul Desai has been issued Detention Order under PITNDPS Act by the Joint Secretary. Ministry of Finance on dated 28.02.2024 and copy of the same served on 29.02.2024 and 01.03.2024 for engaging in illicit trafficking of narcotics drugs & psychotropic substance and confirmation order is awaited from the advisory board.

[11] The learned senior counsel appearing for the petitioner submits that rejoinder affidavit has been filed stating that the allegations made in the final complaint (charge sheet) dated 03.07.2023 submitted before the Ld. Special Judge (NDPS) Court, Manipur in Special Trial Case No. 26 of 2023 are yet to be proved and the same is at the stage for charge hearing, which is pending before the Ld. Special Judge (NDPS) Court, Manipur.

[12] Further, the learned senior counsel appearing for the petitioner submits that there is no prima facie or reasonable ground to believe that the accused had committed an offence from the evidence and the documents produced by the prosecution. The petitioner/accused person was arrested on 10-05-2023 and thereafter, accused/petitioner was remanded into judicial custody by an order of the Ld. Special Judge (ND&PS) Manipur. The investigating officer submitted the final complaint (charge-sheet)

dated 03.07.2023 before Ld. Special Judge ND&PS, Manipur. Therefore, the presence of the petitioner/accused person is no more required for any further investigation of the case. The charge has not been framed against the petitioner/accused person till date and the proceedings of the present trial case has been adjourned without framing of charges.

The petitioner/accused person is in the judicial custody since 10-05-2023 till date and he has spent more than 13 (thirteen) months in judicial custody. The petitioner/accused person is under trial prisoner and his detention in jail for an indefinite period violates Article 21 of the Constitution of India.

Every person, detained or arrested is entitled to get speedy trial. It is settled law that bail is the rule and jail an exception and that the refusal of bail is a restriction on the personal liberty of the individual guaranteed under Article 21 of the Constitution. The detention of the petitioner/accused Person in jail will not serve any useful purpose as the investigating authority already submitted the charge sheet before the Ld. Special Judge, ND&PS, Manipur. There is no likelihood that the petitioner/accused person will abscond after releasing him on bail as he has been co-operating with the I.O. Moreover, there is no question of the petitioner/accused person hampering or tempering with any prosecution evidence or threatening the witness after the petitioner/accused person is released on bail.

The material seized in the present case is "Pseudoephedrine", which is a controlled substance within the meaning of Section 2(viid) of the Act. It is neither a Narcotic Drugs nor a Psychotropic substance as envisaged under Section 2(viia) of the Act. Section 9A of the Act deals with controlled substance is concerned, there is no categorization of small quantity or commercial quantity. Therefore, the classification of small quantity, moderate quantity and Commercial quantity etc. would not be applicable to the present case. Hence, the bar of Section 37 of the NDPS is not attracted in the present case.

[13] The accused through their counsel prays for discharging the accused from the liability of the case during the course of charge hearing. But, vide order dated 18.09.2024, the Ld. Special Judge (ND & PS), Manipur rejected the prayers to discharge the accused persons from the case and accordingly, charges were framed against the accused after threadbare discussion and taking into consideration of the facts and circumstance of the case and the involvement therein of the accused. The case is registered as Special Trial Case No. 26 of 2023. The relevant portion of the said order is extracted herein below:

"15. Without going into a detailed discussion about the merits of the case, in the light of the above decision of the Hon'ble SC, I consider that at this stage, there exist sufficient materials showing prima facie case for proceeding against all the accused persons in the case. Based on the materials on record, I find sufficient basis for framing charge for the commission of offence under Section 25/25 A and 21(c) of the

NDPS Act as against the accused No. 2 namely, Mrs. Nemkhohat Guite and for the commission of offences under Section 25 A/29 of the NDPS Act and Sections 465/487 IPC as against the accused No. 1, 3, 4 and 5o. 1, 3, 4 and 5 namely, Md. Abdul Wakil, Shri Bhadresh Patel, Shri Nitin Kumar Panchal and Shri Anilbhai Nayaka (29) respectively. Further, I find sufficient basis for framing charge for the commission of offence under Section 25 A/29 of the NDPS Act as against the accused No. 6 and 7 namely, Shri Harshal Desai and Shri Mehul Desai. The above said charges are to be framed in separate sheets. Therefore, prayers to discharge the accused persons from the case are hereby rejected and the applications filed in that regard also stand disposed of."

The roles of the applicant/accused above name are extracted herein below:

- (i) Bhadresh Patel supplied 1500 packets each containing 1000 tablets of Pseudoephedrine out of which 533 packets actually seized by the team of NCB Imphal on 03.03.2023 from the premises of Jangmingtang Guite.
- (ii) Bhadresh Patel supplied the Pseudoephedrine contents tablets to Abdul Wakil without having any drug license or valid documents for which he accepted an amount of Rs. 11.68 lakh in his Bank of Baroda account.
- (iii) Bhadresh Patel in connivance with Harshal Desai, Director of Ardro Drug Pvt. Ltd. Tapi, Gujarat received the consignment of Pseudoephedrine tablets in the name of Admos SR (A non NDPS content drug) on receiving instruction from Abdul Wakil.

(iv) Bhadresh Patel got prepared fake labeling of Cetrizone Hydrochloride tablets 10 mg (Levocet) and facilitated Abdul Wakil in safe passage of huge consignment of Pseudoephedrine tablets in the false billing and sent through Giri Cargo, Ahmedabad for further transportation to Delhi.

(v) On 18.01.2023 Bhadresh Patel called Videsh Bhai Patel (One driver of his native of Awakhal, Vadodra) and asked him to deliver 26 carton boxes from Ardor Drug Pvt. Ltd., Dev Krupa Estate, Songadh-Ukai Road, Tapi to M/s Recover Healthcare, Sarkhej, Ahmedabad.

Accordingly, the consignment of Phifed tablets in the false billing of Admos SR transported from manufacturing unit Tapi to Ahmedabad.

Bhadresh Patel made the design the fake labels of Cetrizone Hydrochloride tablets 10 mg (Levocet) from one shop Intergraph at Sola Bhuyang Dev, Ahmedabad which he further sent to M/s Vardhman Printers at Vastrapur, Ahmedabad for final printing which were later affixed on all the 1500 packets of Pseudoephedrine tablets by his two of the employees namely Nitin Kr. Panchal and Anil Nayaka in the godown of M/s Recover Healthcare.

(vi) From analyzing the CDR of Abdul Wakil of his mobile no. 9366428134 and Bhadresh Patel mobile no. 9377958152, it is clear that they were in touch with each other and planning for the conspiracy.

(vii) During the search of office-cum-godown premises of Bhadresh Patel on 09.05.2023, the fake labels of Cetrizine HCL 10 mg (Levocet) tablets manufactured by Sunview Biotech was recovered which was similar in nature found affixed onto the seized 533 packets of tablets by NCB Imphal on 03.03.2023.

(viii) Bhadresh Patel supplied the huge quantity of Pseudoephedrine tablets only on production of fake authorization of Elite Medical Store Aizawl, Mizoram by Abdul Wakil and that is also in garb of an another drug namely Cetrizine HCL 10 mg (Levocet) of which he himself got prepared the labels with the help of one Kalpan Modi etc.

The submissions made by Mr. W. Darakishwrar, learned senior PCCG appearing for the respondent (NCB) made in the reply affidavit are corroborated with the facts and circumstances of the case set out in the charge sheet.

[14] The learned Special Judge (ND & PS), Manipur while passing the impugned order dated 12.09.2023 and while rejecting the bail application of the present petitioner/accused considered all these facts i.e. the facts of the case and allegation made against the present petitioner/accused as narrated above including the health status report submitted by the Medical Officer, Manipur Central Jail, Sajiwa.

[15] Mention is made herein that this Court vide order dated 10.04.2024, was pleased to grant an interim bail to the petitioner/accused. Thereafter, the accused/petitioner had a Gallbladder removal operation and as per this Court's order, after the Gallbladder removal operation surrendered before the Sajiwa Jail. Thereafter, there is no report of further deterioration of the petitioner/accused while in jail.

[16] The learned senior counsel appearing for the petitioner relied on the following judgments:

Dhirendra Prakash Saxena V. Directorate of Revenue Intelligence [2023 SCC OnLine Del 2770 : (2023) 385 ELT 662] –

"34. Judgments relied upon by the learned Sr. SC appearing on behalf of the DRI concern grant of bail in relation to the satisfaction of the twin conditions contained in Section 37 of the NDPS Act. As aforesaid, the position that rigors of Section 37 will not applicable in a case where in the recovery is that of a controlled substance has been clarified by way of various judgments. In Niranjana Jayantilal Shah (supra), while granting bail to the applicant in a case where 100 kg Pseudoephedrine was recovered, a coordinate bench of this Court took note of various other decisions involving controlled substances and observed as under:

"6. During the course of arguments, it was fairly conceded by learned counsel for the respondent that bar of Section 37 of the NDPS Act is not attracted in the present case since as per the prosecution 100 kgs. of Pseudoephedrine was recovered which is a controlled substance within the meaning of Section 2(vii)(b) of the Act. Pseudoephedrine is not a narcotics drug as envisaged under Section 2(vii)(a) of the Act. In N.C. Chellathambi (supra) recovery was of 1600 liters of Acctic Anhydride, in Rajiv Kumar @ Sukha (supra) recovery was of 25 kgs powder ephedrine hydrochloride, in Fajay Ahmed Rasool Shaikh (supra) and another recovery was of 290 kgs of pseudoephedrine, in Chakrapani Dutt (supra) recovery was of 100 litres of Acctic Anhydride, and inal these cases since the accused had remained in custody for certain period, they were released on bail."

Manoj Kumar V. Director of Revenue Intelligence (Through Vikram Singh) [2015 SCC OnLine Del 7830 : (2015) 219 DLT 112] –

"3. The submission of learned counsel for the petitioner is that he was merely an employee of Rakesh Arora, the co-accused, who was the kingpin. The petitioner was merely acting on the instructions of his employer. Learned counsel submits that Section 37 of the Narcotic Drugs and Psychotropic Substances Act (NDPS Act) is not applicable in the present case, since pseudoephedrine is not a narcotic substance. He submits that the petitioner has been in custody since the date of his arrest, i.e. 02.05.2013. Learned counsel submits that this Court in the decision in Niranjana Jayantilal Shah v. Directorate of Revenue Intelligence decided on 19.11.2013 (Bail Appl No. 1202/2013) had granted bail on the accused, where the recovery of the same controlled substance had been made of 100 kgs. This decision referred to had relied upon several other earlier decisions of the Court, where recovery of much larger quantities of controlled substance have been made.

10. As noticed above, the petitioner has been in custody for nearly 22 months. The decision rendered by this Court in Niranjana Jayantilal Shah (supra) shows that in cases where quantity of the controlled substance recovered was even much larger, the Court had granted bail to the accused considering the period for which they had granted bail to the accused considering the period for which they had remained in custody during the trial. Accordingly, the present application is allowed."

Tinimo Efere Wowo V. State Govt. of NCT of Delhi [2022 SCC OnLine Del 46] –

"11. Section 9A of the NDPS Act deals with the power to control and regulate' controlled substance. "Controlled substance" means any substance which the Central Government may, having regard to the available information as to its possible use in the production manufacture of narcotic drugs or psychotropic substances or to the provisions of any international Convention, by notification be a controlled in the official Gazette, declare substance. The Ministry of Finance Department of Revenue vide its notification dated 28th December, 1999 has declared pseudo-ephedrine a controlled substance under the Act. The Central Government being of the opinion that having regard to the use of the controlled substances in the production or manufacture of any narcotic drug or psychotropic substance, it is necessary or expedient so to do in the public interest, in exercise of powers conferred by Section 9A of the Act has made the Narcotic Drugs and Psychotropic Substances (Regulation of Controlled Substance) Order, 1993, which has come into force w.e.f. 15th April, 1993.

12. The substance alleged to have been recovered from the petitioner/accused is 5 Kg. of pseudoephedrine which is a controlled substance. It has been rightly submitted by the Ld. counsel for the petitioner/accused that it is neither a narcotic drug nor a psychotropic substance under the NDPS Act. The alleged offences are not punishable with death or imprisonment for her NDPS Art The ailing U/s 9A r/w section 254 of the NDPS Act is punishable with imprisonment which may extend to 10 year and also fine which may also extend to imprisonment which may of Section 37 is not attracted in the present case as the substance recovered is a controlled substance within the meaning of Section 2 (viid) of the Act.

18. The other recovery from the possession of the petitioner is 15 gm. Cocaine which is also not a commercial quantity, therefore, in the instant case, bar of Section 37 of NDPS Act is not applicable. Though the petitioner is a foreigner but as already observed hereinabove and in view of the judgments "supra" there is no bar to release a foreign national on bail in the given facts and circumstances of this case. In the present case, the petitioner is married to an Indian lady and having kids with her. The factum of his marriage and kids has been verified by the state and statements of the relatives of the wife of the petitioner have already been recorded in this

regard. The petitioner is in J.C. since 16.02.2018 and the final conclusion of the trial of this case is likely to take long time. Therefore, the petitioner is admitted to bail on his furnishing personal bond in the sum of Rs. 1,00,000/- with two solvent sureties each of the like amount subject to the satisfaction of the trial Court. Being released on bail, the petitioner shall inform the IO of the case, the address at which he will reside during, the period he is on bail. Any change in the address shall also be communicated to the IO of the case within 2 days. The petitioner shall report to the IO of the case at police station Crime Branch, Delhi every fortnight till the conclusion of the trial. The petitioner shall not leave the limits of NCT of Delhi without prior permission of the Trial Court. With these directions, the application is disposed of. "

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"4. Rebutting the submission of learned counsel for the respondent it was submitted by learned counsel for the petitioner that Rizwan Ahmad, relied upon by learned counsel for the respondent, does not help him, inasmuch as, in that case also recovery was of the controlled substance and therefore Section 37 of NDPS Act was not applicable, yet on that ground alone the application was dismissed. SLP was dismissed by a non-speaking order. In the subsequent case titled as Department of Customs v. Hemant Kumar 2012 [4] JCC [Narcotics] 178 it was observed that the judgment of Rizwan Ahmad is contrary to the explicit language of Section 37 of NDPS Act. The same is per incuriam. That being so, the said order does not come in the way of the petitioner for getting the relief of bail.

6. During the course of arguments, it was fairly conceded by learned counsel for the respondent that bar of Section 37 of the NDPS Act is not attracted in the present case since as per the prosecution 100 kgs. of Pseudoephedrine was recovered which is a controlled substance within the meaning of Section 2(vii) (b) of the Act. Pseudoephedrine is not a narcotics drug as envisaged under Section 2(vii)(a) of the Act. In N.C. Chellathambi (supra) one tonne of ephedrine was recovered, in Ajay Aggarwal (supra) recovery was of 1600 liters of Acctic Anhydride, in Rajiv Kumar Sukha (supra) recovery was of 25 kgs powder ephedrine hydrochloride, in Faiyaz Ahmed Rasool Shaikh (supra) and another recovery was of 290

kgs of pseudoephedrine, in Chakrapani Dutt (supra) recovery was of 100 liters of Acctic Anhydride, and in all these cases since the accused had remained in custody for certain period, they were released on bail. As regards Rizwan Ahmed, where the bail application was dismissed, it is fairly conceded by learned counsel for DRI that DRI had not taken any plea that the petitioner was not entitled to bail due to rigour of Section 37 of the NDPS Act on which ground alone the application was dismissed, however, it was submitted that since the SLP has been dismissed, therefore, the petitioner is not entitled for ball. In Department of Customs (supra) relied upon by learned counsel for the petitioner, it was observed that the judgment in Rizwan Ahmad is contrary to the explicit language of Section 37 of NDPS Act and the same is per incuriam."

[17] It is admitted position of fact and law that the seized articles as mentioned in the present case are controlled drugs as such, Section 37 of the ND & PS Act is not applicable and the accused/petitioner and his co-accused are right now languishing in jail for about one and half years, but considering the nature of the case, the prosecution have taken the steps leading to the filing of charge sheet promptly and the Ld. Trial Court also conducted the case promptly without wasting time.

[18] In the facts and circumstances of the case, considering the role of the present petitioner/accused in commission of the alleged crime set out in the case, this Court is of the view that the Ld. Special Court (ND & PS) rightly passed the impugned order and there is no room for interfering with the impugned order. Accordingly, the present bail application filed by the accused/petitioner is rejected as devoid of merit. However, the liberty is given to the petitioner/accused to approach the Ld. Special Court

wherein, the trial is going on, if the health condition of the accused/petitioner is deteriorating and if need arises for further treatment. The Ld. Trial Court is directed to complete trial of the case as soon as possible.

Accordingly, with the above finding and direction, this bail application is dismissed and disposed of.

JUDGE

FR/NFR

Bipin