GAHC010168472022

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Bail Appln./2090/2022

DIMSIANNEM @ PRICILLA
W/O IMTIWAPANG IMSANG
R/O MADANRTING BLOCK F
NEAR BAPTIST CHURCH
P.S. MADANRTING
DIST. EAST KHASI HILLS, MEGHALAYA.

VERSUS

THE STATE OF ASSAM
TO BE REP. BY THE PP, ASSAM

Advocate for the Petitioner : Mr. A. Ahmed, Advocate.

Advocate for the Respondent : Mr. R. J. Baruah,
Additional Public Prosecutor

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH

Date of Hearing : 20.09.2022

Date of Judgment : 27.09.2022

JUDGMENT AND ORDER (CAV)

Heard Mr. A. Ahmed, the learned counsel for the petitioner and Mr. R. J. Baruah, the learned Additional Public Prosecutor for the State respondent.

2. This is an application under Section 439 Cr.P.C. for grant of bail to the petitioner, namely, Smti. Dimisiannem @ Pricilla, who was arrest on 01.09.2021 and since then the petitioner has been in custody in connection with NDPS Case No.18/2022 which is pending adjudication before the Court of the learned Additional District and Sessions Judge No.2, Kamrup (M) at Guwahati arising out of Bhangagarh P.S. Case No.507/2021, under Sections 22 (C)/29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, the Act of 1985).

3. A perusal of the FIR enclosed in the instant application reveals that one Mr. Omar Faruk, SI UB of Police, Bhangagarh Police Station had lodged an FIR stating *inter-alia* that on 26.08.2021, at 4:30 PM acting on a tip off the informant including the WSI, Woman Constable, 1 Sec.Commando BN.1Sec of CRPF B128 Crime Staff of East District PAPA Staff along with DCP (east), ACP Dispur arrived at Kunjalata Bibah Bhawan near Mizoram House, G.S. Road and searched the room No.15 of Kunjalata Bibah Bhawan as authorized by ACP, Dispur and recovered one packet of yaba tablets from one Smti. Lalpian Mawii @ Khumi Khabug, 42 years resident of B-67/D, BIAL-II, DAWRPUI VENGTHAR, near YMA Hall, Aizawl and opened the packet in front of witnesses where 8500 numbers of yaba tablets weighing 950 grams including plastic packets (suspected psychotropic substance) which was duly seized on 26.08.2021 at 6:10 PM from the possession of the said Smti. Lalpian Mawii by observing all formalities as per the Act of 1985. It was mentioned that during the search, one JIO LYF mobile handset bearing Mobile No.9863724502 was also seized from her possession. Further to that, it could be learnt from the preliminary investigation that the apprehended accused lady kept the yaba tablets with her for commercial selling to other drug peddlers for her personal gain. On the basis of the said FIR being lodged, Bhangagarh P.S. Case No.507/2021 was registered under Sections 22(C)/29 of the Act of 1985. It further reveals from the case diary that on the basis of the statement made by Smti. Lalpian Mawii, the petitioner was apprehended on 01.09.2021 along with her breast feeding

child from the residence of the petitioner situated at Happy Valley, Mandanrting, Block-F near Baptist Church, P.S.- Mandanrting, District-Khasi Hills, Meghalaya. Prior to arrest of the petitioner, the house of the petitioner was searched and certain articles were seized. The seized articles were duly recorded in MR No.69/2021. From a perusal of the said MR No.69/2021 it reveals that the following articles were seized:-

Description of Seizure List:

1. One NOKIA mobile handset, IMEI No.-35771810286299
2. One OPPO mobile handset
3. One MOTO mobile handset
4. Total Rs.35,600/-(500 X 7=3500 and 200 X 3=600)

4. Thereupon it reveals that on the same date, the petitioner was produced before the SDJM(S), No.2, Kamrup (M) along with a baby girl, namely, Imana, aged about 1 (one) year. The petitioner thereupon was remanded to the judicial custody.

5. The record further reveals that the Investigating Officer submitted the charge sheet being Charge Sheet No.85/2021 dated 21.12.2021 under Section 22 (C)/29 of the Act of 1985 against the petitioner along with another. In the said charge sheet so submitted, the contents of the FIR was reiterated and further it was mentioned that during the investigation, the place of occurrence was visited, a rough sketch map of the place of occurrence was drawn up with index, recorded the statements of the complainant and the witnesses under Section 161 of the Cr.P.C. in connection with the said case. It was mentioned that the accused persons were arrested. Further to that, it was mentioned that upon interrogation of Smti. Lalpian Mawii and her statement recorded under Section 161 Cr.P.C. in connection with the said case, she was forwarded to the Chief Judicial Magistrate for remand in police custody. During interrogation, it came to light that the arrested accused person bought the tablets from the petitioner and the

Investigating Officer along with the staff went to Shillong and arrested the petitioner and searched the house of the petitioner in presence of available witnesses and found three numbers of mobile phones and Rs.35,600/- and forwarded to judicial custody. It was further mentioned that the report from the FSL, Kahilipara, in respect to the yaba tablets seized from Smti. Lalpian Mawii, tested positive for Methamphetamine. It was further mentioned that during the course of investigation, the case was found well established under Section 22(6)/29 of the Act of 1985 against Smti. Lalpian Mawii and the petitioner, accordingly, the said charge sheet was submitted. It was further mentioned that the witnesses in Column No.6 would prove the case of the prosecution. A further perusal of the Column No.6 of the charge sheet would show that there were four witnesses mentioned therein. The witness at Sl. No.1 was the informant. The witnesses at Sl Nos.2 & 3 were the seizure witnesses in respect to seizure list being MR No.58/2021. The witness No.4 was the person who seized the articles for the petitioner and prepared the search and seizure list being MR No.69/2021.

6. At this stage it may be relevant to mention that the search and seizure list being MR No.58/2021 was the seizure made to one packet of yaba tablets containing total 8500 numbers of yaba tablets weighing 950 grams including plastic packets and one Jio LYF mobile handset bearing SIM No.9863724502 which was seized from Smti. Lalpian Mawii. The witness at Sl. No.4 is the SI (P) G.K. Bhumij who made search and seizure list being MR No.69/2021 wherein the articles which have been already quoted herein above pertaining to MR No.69/2021 were seized. At this stage, it may be mentioned that MR No.69/2021 had no relation to any seizure being made as regards any narcotic and psychotropic substances as defined in the Act of 1985.

7. From a perusal of the case diary as well as the charge sheet, it can also be seen that there is nothing mentioned to link the petitioner or the seized articles in MR No.69/2021 to Smti. Lalpian Mawii or to the seized articles in terms with MR No.58/2021. The only link as mentioned in the charge sheet is on the basis of the

statement being made by Smti. Lalpian Mawii that she bought the tablets from the petitioner. It is on the basis of that statement that the petitioner was arrested and has been in custody since 01.09.2021 and the charge sheet has also been submitted on 21.12.2021 against the petitioner.

8. Taking into account that the petitioner has been languishing in jail since 01.09.2021 and the petitioner's bail application was also rejected by the trial court, the instant application was filed on 23.08.2022.

9. In the backdrop of the above, let this Court take into consideration as to whether this is a fit case for grant of bail. For grant of bail under the Act of 1985, Section 37 of the Act of 1985 is relevant. The same is therefore, quoted herein below:-

> "*37. Offences to be cognizable and non-bailable.—*
>
> *(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) —*
>
> *(a) every offence punishable under this Act shall be cognizable;*
>
> *(b) no person accused of an offence punishable for 2[offences under section 19 or section 24 or section 27A and also for offences involving commercial quantity] shall be released on bail or on his own bond unless—*
>
> *(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and*
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> *(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.*
>
> *(2) The limitations on granting of bail specified in clause (b) of sub-section (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force, on granting of bail."*

10. It is evident from a plain reading of the non-obstinate clause inserted in sub-section (1) and the conditions imposed in sub-section (2) of Section 37 of the Act of 1985 that there are certain restrictions placed on the power of the court when granting bail to a person accused of having committed an offence under the Act of 1985. Not

only are the limitations imposed under Section 439 of the Cr.P.C. to be kept in mind the restrictions placed under Clause (b) of sub-section (1) of Section 37 are also to be factored in. The conditions imposed under Clause (b) of sub-section (1) of Section 37 is that (i) the Public Prosecutors ought to be given an opportunity to oppose the application moved by an accused person for release and (ii) if such an application is opposed then the court must be satisfied that there are reasonable grounds of believing that the person accused is not guilty of such offence and further the court must be satisfied that the accused person is unlikely to commit any offence while on bail.

11. The Supreme Court had laid down broad parameters to be followed while considering the application for bail moved by the accused involved in the offences of the Act of 1985. In ***Union of India vs. Ram Samujh and Another,*** reported in ***(1999) 9 SCC 429***, the Supreme Court elaborated as under:-

> "***7.*** *It is to be borne in mind that the aforesaid legislative mandate is required to be adhered to and followed. It should be borne in mind that in a murder case, the accused commits murder of one or two persons, while those persons who are dealing in narcotic drugs are instrumental in causing death or in inflicting death-blow to a number of innocent young victims, who are vulnerable; it causes deleterious effects and a deadly impact on the society; they are a hazard to the society; even if they are released temporarily, in all probability, they would continue their nefarious activities of trafficking and/or dealing in intoxicants clandestinely. Reason may be large stake and illegal profit involved. This Court, dealing with the contention with regard to punishment under the NDPS Act, has succinctly observed about the adverse effect of such activities in Durand Didier v. Chief Secy., Union Territory of Goa as under:*
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> > "*24. With deep concern, we may point out that the organised activities of the underworld and the clandestine smuggling of narcotic drugs and psychotropic substances into this country and illegal trafficking in such drugs and substances have led to drug addiction among a sizeable section of the public, particularly the adolescents and students of both sexes and the menace has assumed serious and alarming proportions in the recent years. Therefore, in order to effectively control and eradicate this proliferating and booming devastating menace, causing deleterious*

effects and deadly impact on the society as a whole, Parliament in its wisdom, has made effective provisions by introducing this Act 81 of 1985 specifying mandatory minimum imprisonment and fine."

8. *To check the menace of dangerous drugs flooding the market, Parliament has provided that the person accused of offences under the NDPS Act should not be released on bail during trial unless the mandatory conditions provided in Section 37, namely,*

(i) there are reasonable grounds for believing that the accused is not guilty of such offence; and

(ii) that he is not likely to commit any offence while on bail are satisfied. The High Court has not given any justifiable reason for not abiding by the aforesaid mandate while ordering the release of the respondent-accused on bail. Instead of attempting to take a holistic view of the harmful socio-economic consequences and health hazards which would accompany trafficking illegally in dangerous drugs, the court should implement the law in the spirit with which Parliament, after due deliberation, has amended."

12. Therefore, the scheme of Section 37 of the Act of 1985 reveals that the exercise of the power to grant bail is not only subject to limitation contained in Section 439 Cr.P.C. but it also subject to limitation placed by Section 37 of the Act of 1985 which commences with a non-obstinate clause. The operative part of the said section is in the negative form prescribing the enlargement of bail to any person accused of commission of an offence under the Act of 1985, unless two conditions are satisfied. The first condition is that the prosecution may be given an opportunity to oppose the application; and the second is that the court must be satisfied that there are reasonable grounds for believing that he is not guilty of such offence and he is not likely to commit any offence under the Act of 1985 when released on bail. If either of the two conditions are not satisfied, the ban for granting bail operates.

13. In the case of ***Collector of Customs, New Delhi vs. Ahmadalieva Nodira***, reported in ***(2004) 3 SCC 549***, a Bench of three Judges of the Supreme Court held that the limitation on granting bail comes into only when the question of granting bail arises on merits. It

was observed that apart from the grant of opportunity to the Public Prosecutor the other twin conditions which really have relevance so far as the accuseds concerned are: the satisfaction of the court that there was 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 Supreme Court observed that the expression "reasonable grounds" means something more than a prima-facie ground. 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 a sufficient in themselves to justify that the accused is not guilty of the alleged offence.

14. In a recent judgment of the Supreme Court in the case of ***Narcotics Control Bureau vs. Mohit Agarwal***, reported in ***(2022) SCC Online SC 891,*** the Supreme Court also has taken into consideration the expression "reasonable grounds". Referring to the judgment in ***Ahmadalieva Nodira*** (supra) and ***the State of Kerala & Others vs. Rajesh & Others***, reported in ***(2020) 12 SCC 122***, the Supreme Court observed at paragraph No.14 that the expression "reasonable grounds" used in Clause (b) of sub-section (1) of Section 37 of the Act of 1985 would mean credible, plausible and grounds for which the court to believe that the accused person is not guilty of the alleged offence. The Supreme Court observed that for arriving at such a conclusion, such facts and circumstances must exist in a case that can persuade the court to believe that the accused person would not have committed such offence dove tailed with the aforesaid satisfaction is an additional consideration that the accused person is unlikely to commit any offence while on bail. It was further observed by the Supreme Court in paragraph No.15 of the said judgment that at the time of examining the application for bail, in the context of Section 37 of the Act of 1985, the court is not required to record the findings that the accused person is

not guilty. The court is also not expected to weigh the evidence for arriving at a finding as to whether the accused has committed an offence under the Act of 1985 or not. The entire exercise that the court is expected to undertake at the stage of consideration of bail is for the limited purpose of releasing him/or her on bail. Thus, the focus is on the availability of reasonable grounds for believing that the accused is not a guilty of an offence that he has been charged with and he is unlikely to commit an offence under the Act while on bail.

15. At this stage, this Court also finds it relevant to refer another judgment of the Supreme Court in the case of ***Ranjitsinh Brahmajeetsing Sharma vs. State of Maharashtra and Another***, reported in ***(2005) 5 SCC 294***. It is relevant herein to take note of that the said case was rendered in respect to Section 21 (4) of the Maharashtra Control of Organized Crime Act, 1999 which is parimateria to Section 37 (i) (b) of the Act of 1985. The Supreme Court while considering the restrictive nature of the provision contained in Section 21 (4) of the Maharashtra Control of Organized Crime Act, 1999 vis-a vis the right of personal liberty of an individual observed that the question as to whether a person is involved in the commission of an organized crime or abetment thereof must be judged objectively. Paragraph Nos.38, 44 & 48 of the said judgment, being relevant, are quoted herein below:-

> "***38.*** *We are furthermore of the opinion that the restrictions on the power of the court to grant bail should not be pushed too far. If the court, having regard to the materials brought on record, is satisfied that in all probability he may not be ultimately convicted, an order granting bail may be passed. The satisfaction of the court as regards his likelihood of not committing an offence while on bail must be construed to mean an offence under the Act and not any offence whatsoever be it a minor or major offence. If such an expansive meaning is given, even likelihood of commission of an offence under Section 279 of the Penal Code, 1860 may debar the court from releasing the accused on bail. A statute, it is trite, should not be interpreted in such a manner as would lead to absurdity. What would further be necessary on the part of the court is to see the culpability of the accused and his involvement in the*

commission of an organised crime either directly or indirectly. The court at the time of considering the application for grant of bail shall consider the question from the angle as to whether he was possessed of the requisite mens rea. Every little omission or commission, negligence or dereliction may not lead to a possibility of his having culpability in the matter which is not the sine qua non for attracting the provisions of MCOCA. A person in a given situation may not do that which he ought to have done. The court may in a situation of this nature keep in mind the broad principles of law that some acts of omission and commission on the part of a public servant may attract disciplinary proceedings but may not attract a penal provision.

44. *The wording of Section 21(4), in our opinion, does not lead to the conclusion that the court must arrive at a positive finding that the applicant for bail has not committed an offence under the Act. If such a construction is placed, the court intending to grant bail must arrive at a finding that the applicant has not committed such an offence. In such an event, it will be impossible for the prosecution to obtain a judgment of conviction of the applicant. Such cannot be the intention of the legislature. Section 21(4) of MCOCA, therefore, must be construed reasonably. It must be so construed that the court is able to maintain a delicate balance between a judgment of acquittal and conviction and an order granting bail much before commencement of trial. Similarly, the court will be required to record a finding as to the possibility of his committing a crime after grant of bail. However, such an offence in futuro must be an offence under the Act and not any other offence. Since it is difficult to predict the future conduct of an accused, the court must necessarily consider this aspect of the matter having regard to the antecedents of the accused, his propensities and the nature and manner in which he is alleged to have committed the offence.*

48. *In Jayendra Saraswathi Swamigal v. State of T.N. this Court observed:*

> *"16. ... The considerations which normally weigh with the court in granting bail in non-bailable offences have been explained by this Court in State v. Capt. Jagjit Singh and Gurcharan Singh v. State (Delhi Admn.) and basically they are — the nature and seriousness of the offence; the character of the evidence; circumstances which are peculiar to the accused; a reasonable possibility of the presence of the accused not being secured at the trial; reasonable apprehension of witnesses being tampered with; the larger interest of the public or the State and other similar factors which may be relevant in the facts and circumstances of the case."*

16. From a perusal of the said paragraphs of the judgment quoted herein above it would reveal that the Supreme Court observed that the wording of Section 21 (4) of the said Act of 1999 does not lead to the conclusion that the court must arrive at a positive finding that the applicant for bail has not committed an offence under the Act. It was observed that if such a construction is placed, the court intending to grant bail must arrive at the finding that the applicant has not committed such an offence. In such an event, it would be impossible for the prosecution to obtain a judgment of conviction of the applicant. It was observed that such could not have been the intention of the legislature and as such Section 21 (4) of the Act of 1999 must be construed reasonably. It was further observed that Section 21 (4) of the Act of 1999 should be construed that the court is able to maintain a delicate balance between a judgment of acquittal or conviction and an order granting bail much before the commencement of trial. The Supreme Court observed that the Court also would be required to record a finding as to the possibility of the accused committing a crime after the grant of bail. It was observed that such an offence in futuro must be an offence under the Act and not any other offence. It was further observed that it is difficult to predict the future conduct of an accused for which the court must necessarily consider this aspect of the matter having regard to the antecedents of the accused his/her propensities and the nature and manner which he/she is alleged to have committed the offence. Further to that, the Supreme Court observed that the duty of the court, at this stage, is not to weigh the evidence meticulously but to arrive at a finding on the basis of broad probabilities. The Supreme Court observed that while dealing with a special statute like the Act of 1999, the court may have to probe into the matter deeper so as to enable it to arrive at a finding that the materials collected against the accused during the investigation may not justify a judgment of conviction. The findings recorded by the Court while granting or refusing bail undoubtedly would be tentative in nature, which may not have any bearing on the merit of the case and the trial court would, thus, be free to decide the

case on the basis of evidence adduced at the trial, without in any manner being prejudiced thereby.

17. Therefore, applying the said principle as laid down in the judgment in the case of ***Ranjitsinh Brahmajeetsing Sharma*** (supra) to Section 37 (1) (b) the Act of 1985 wherein the provisions of Section 37 (1) (b) is parimateria to Section 21 (4) of the Act of 1999, this Court therefore has to come to a conclusion/satisfaction that there are reasonable grounds to believe that the petitioner is not guilty of the offence on the basis of the materials collected against the petitioner during the investigation that such materials may not justify a judgment of conviction. As regards the other condition, as stipulated under Section 37 (1) (b) (ii) of the Act of 1985 that the petitioner is not likely to commit any offence while on bail, this Court must necessarily consider this aspect of the matter having regard to the antecedent of the petitioner, her propensities and the nature and manner in which the petitioner is alleged to have committed the offence.

18. In the backdrop of the above, let this Court take into consideration the materials before this Court. As already observed herein above, the petitioner was implicated and apprehended on the basis of the statement made by Smti. Lalpian Mawii, the co-accused during interrogation. During the search and seizure so carried out at the residence of the petitioner there were no offending/materials substance found in terms of the Act of 1985. What was seized were three mobile handsets and an amount of Rs.35,600/-.

19. A perusal of the charge sheet bearing Charge Sheet No.85/2021 dated 21.12.2021 only mentioned that during the interrogation of Smti. Lalpian Mawii it was learnt that Smti. Lalpian Mawii had purchased the tablets from the petitioner. Therefore, except the statement made by the co-accused, there is no other materials whatsoever to link the seized yaba tablets with the petitioner. The four witnesses, who are to prove the case of the prosecution as mentioned in Column No.6 of the charge sheet are the informant, the witnesses of the search and seizure list being MR No.58/2021 and the

Officer who made the search and seizure list MR No.69/2021. There is also no materials on the charge sheet to show that the seized articles from the possession of the petitioner which are mobile handsets and an amount of Rs.35,600/- could be linked with Smti. Lalpian Mawii and/or the seized yaba tablets. Therefore, the only link between the petitioner and Smti. Lalpian Mawii was the statement made by Smti. Lalpian Mawii during interrogation thereby implicating the petitioner.

20. Now, the question which arises as to whether such statement can be used for conviction of the petitioner. The Supreme Court in the case of ***Tofan Singh vs. State of Tamil Nadu***, reported in ***(2021) 4 SCC 1*** observed that the confessional statement made before an Officer designated under Section 42 or Section 53 of the Act of 1985 cannot be the basis to convict a person under the Act of 1985. It was observed that without any non-obstinate clause doing away with Section 25 of the Evidence Act, 1872 and without any safeguard would be a direct infringement of the constitutional guarantees contained in Articles 14, 20 (3) and 21 of the Constitution of India. In paragraph Nos. 158 and its sub-paragraphs, the Supreme Court observed as follows:-

> "***158.*** *We answer the reference by stating:*
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> ***158.1.*** *That the officers who are invested with powers under Section 53 of the NDPS Act are "police officers" within the meaning of Section 25 of the Evidence Act, as a result of which any confessional statement made to them would be barred under the provisions of Section 25 of the Evidence Act, and cannot be taken into account in order to convict an accused under the NDPS Act.*
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> ***158.2.*** *That a statement recorded under Section 67 of the NDPS Act cannot be used as a confessional statement in the trial of an offence under the NDPS Act."*

21. From a perusal of the above quoted paragraphs it would be seen that the officers who invested with the power under Section 53 of the Act of 1985 are "police officers" within the meaning of Section 25 of the Evidence Act, as a result of which any confessional statement made to them would be barred under the provisions of Section 25 of the Evidence Act, and cannot be taken into account in order to convict an accused

under the Act 1985. It was further observed that the statement recorded under Section 67 of the Act of 1985 cannot be used as a confessional statement in the trial of an offence under the Act of 1985. Therefore, merely on the basis of a statement made by Smti. Lalpian Mawii, the co-accused, the petitioner cannot be convicted. This observation of this Court finds support from the observation of the Supreme Court made in the case of ***Mohit Agarwal*** (supra) wherein in paragraph No.16 of the said judgment, the Supreme Court observed that the learned Single Judge of the High Court cannot be faulted for holding that the appellant- NCB could not have relied on the confessional statements of the respondent and the other co-accused recorded under Section 67 of the NDPS Act in the light of law laid down by a Three Judges Bench in the case of Tofan Singh (supra), wherein as per the majority decision, a confessional statement recorded under Section 67 of the NDPS Act has been held to be inadmissible in the trial of an offence under the NDPS Act. It was further observed that the admissions made by the respondent while in custody to the effect that he had illegally traded in narcotic drugs, will have to be kept aside. It is also relevant to take note of that in the said judgment, i.e. in ***Mohit Agarwal*** (supra), the Supreme Court had interfered with the order of grant of bail to the accused on the ground that it was not merely on the basis of the confessional statement of the co-accused which was relied on to oppose the bail application. It was further observed in paragraph No.16 itself, that the appellant-NCB had specifically stated that it was the disclosures made by the respondent that had led the NCB team to arrive at and raid the godown of the co-accused, Promod Jaipuria which resulted in the recovery of a large haul of different psychotropic substances in the form of tablets, injections and syrups. It is for that reason the Supreme Court interfered with the granting of bail by the Calcutta High Court in the said case. However in the instant case if the materials on record are taken into account, there is nothing on record except the confessional statement so made by Smti. Lalpian Mawii before the Interrogating Officer. There was no recovery of any goods or any articles which were offending as per the Act of 1985 from the possession

of the petitioner. Under such circumstances, this Court, therefore has reasonable grounds to believe that the petitioner is not guilty of such offence and the materials may not justify a conviction against the petitioner.

22. Now coming to the next question as to whether the petitioner is likely to commit offence while on bail. As already observed herein above, the said aspect of the matter has to be taken into consideration having regard to the antecedent of the petitioner, her propensity and the nature and the manner in which the petitioner is alleged to have committed the offence. In the instant case, there has been nothing shown by the respondent State by placing on record any materials as regards the antecedent of the petitioner and her propensities. As already discussed, the petitioner has been alleged to have committed the offence only on the basis of statement by the co-accused and there is no other material as could be seen from the charge sheet or even from the search and seizure list, i.e., MR No.69/2021 which was the search and seizure made in respect to the articles from the petitioner.

23. In view of the above, this Court is satisfied that there are reasonable grounds to believe that the petitioner may ultimately be acquitted of the offence under Section 22(C)/29 of the Act of 1985. There are no cogent materials to indicate that in the event of enlargement of bail, the accused petitioner shall commit any offence under the Act of 1985. Any further incarceration of the accused petitioner in anticipation of positive evidence does not appear to be justified, more so, when the charge sheet has already been submitted. In such view of the matter it calls of imposition of appropriate conditions.

24. Accordingly, the accused petitioner, namely, Smti. Dimisiannem @ Pricilla is allowed to be enlarge on bail on furnishing a bail bond of Rs.1,00,000/- with two local sureties to the satisfaction of the learned Additional District and Sessions No.2, Kamrup (M) At Guwahati subject to the following conditions:

(a) the accused petitioner shall not leave the territorial jurisdiction of the Police

Station Mandanrting, District-East Khasi Hill, Meghalaya, without prior written permission from the Officer-in-Charge of the said Police Station;

(b) the accused petitioner shall not tamper with the evidence of the case;

(c) the accused petitioner 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/her from disclosing such facts to the Court or to any police officer;

(d) the accused petitioner shall regularly appear before the Court below and the learned Court below shall be at liberty to continue the trial of the case keeping the petitioner in custody in the event the petitioner fail to appear before the Court below on a single date fixed by the Court without there being any satisfactory ground(s) assigned therein; and

(e) the accused petitioner shall deposit her passport/visa, etc, if any, in the learned Court below.

(f) the accused petitioner shall not commit any offence under the Act of 1985 while on bail.

25. The observation made herein above are only tentative to the consideration of the bail application and the trial Court shall not be influenced in any manner during the trial of the said proceedings.

26. With the above observations and directions, this Bail Application stands allowed.

JUDGE

Comparing Assistant