

**(2002) 05 GAU CK 0019**

**Gauhati High Court (Aizawl Bench)**

**Case No:** Criminal Miscellaneous Application No. 1 of 2002

State of Mizoram

APPELLANT

Vs

Zoliana

RESPONDENT

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Date of Decision: May 30, 2002

Acts Referred:

- Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) - Section 21

Citation: (2002) CriLJ 3420 : (2003) 1 GLR 202 : (2002) 3 GLT 64

Hon'ble Judges: Aftab H. Saikia, J

**Bench:** Single Bench

**Advocate:** T. Vaiphei, PP, for the Appellant; None, for the Respondent

**Final Decision:** Allowed

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### **Judgement**

@JUDGMENTTAG-ORDER

A.H. Saikia, J.

Heard Mr. T. Vaiphei, learned P.P. Mizoram. None appears for the respondent despite notice upon him as reflected from the Office Note dated 27-5-2002.

2. This application for cancellation of bail granted to the respondent, has been preferred by the State contending that since the offence is under the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short "the Act") which is exclusively triable by the Special Judge, the learned Addl. District Magistrate, Champhai District has no jurisdiction to entertain an application for bail of the respondent. Accordingly, on the count - of lack of jurisdiction of the learned Addl. District Magistrate to grant bail to the respondent-accused of an offence u/s 21 of the Act above, the bail so granted to him is liable to be cancelled. Mr. Vaiphei, learned P. P. has trenchantly contended that the Government of Mizoram has already constituted Special Court to be presided by the Special Judge under the Act for all the Districts within the Mizoram and since the offences under the Act which are punishable with imprisonment for a term more than three years shall be triable only by the Special

Court, the learned Addl. District Magistrate, Champhai not being a Special Court has no jurisdiction to grant bail to the respondent. It is contended that the accused-Respondent was arrested on 27.9.2001 by the Sub-Inspector of Excise, Excise Station, Champhai and seized 130 grams of white powder suspected to be Heroin sequel to which a Case has been registered against the accused/respondent being Excise G.R. No. 118/2001 u/s 21 of the Act. Accordingly to Mr. Vaiphei since suspected Heroin of 130 grams was seized from the possession of the respondent, the offence so allegedly committed by the respondent falls u/s 21(b) of the Act. The provisions of Section 21(b) may be extracted as under :-

"21. Punishment for contravention in relation to manufactured. - drugs and preparations :- Whoever, in contravention of any provision of this Act or any rule or order made or condition of licence granted there-under, manufactures, possesses, sells, purchases, transports, imports inter-State, exports inter-State or uses any manufactured drug or any preparation containing any manufactured drug shall be punishable :

(a) .....

(b) Where the contravention involves quantity, lesser than commercial quantity but greater than small quantity, with rigorous imprisonment for a term which may extend to ten years, and with fine which may extend to one lakh rupees."

My attention has been drawn to the Table annexed with the Act quantifying the small quantify and Commercial quantity in grams as regards Heroin being placed at Serial No. 56. It shows that 5 grams will be treated as small quantity when commercial quantity will be 250 grains. Since the present case relates to 130 grams of suspected Heroin, the punishment prescribed for the possession of such quantity under the above provision is rigorous imprisonment for a term which may extend to ten years, and with fine which may extend to one lakh rupees. In view of such punishment, it appears that the matter is exclusively triable by the Special Court under the Act which debars the jurisdiction of any other Courts Including the Addl. District Magistrate to try or grant bail to the accused.

3. Upon hearing the learned P.P I have gone through the orders dated 16.10.2001 and 22.10.2001 (Annexures -1 and 2 in this application) by which the learned Addl. District Magistrate, Champhai District granted bail to the petitioner after hearing the learned A.P.P. representing the State, From the perusal of those orders and having regards to the provisions of law laid down under the Act. it appears that the learned Addl. District Magistrate has no jurisdiction to grant bail or entertain any bail application of the respondent/accused of an offence u/s 21(b) of the Act. It also appears from the record that the learned Addl. District Magistrate has not forwarded the respondent to the Special Court having jurisdiction to try the instant case.

4. That being the legal position, the bail so granted by the learned Addl. District Magistrate to the respondent may be held to be illegal, without jurisdiction and void ab initio and accordingly, the bail granted by orders dated 16.10.2001 as well as 21.10.2001 in favour of the respondent is hereby cancelled. Since the bail of the respondent has been cancelled on the sole ground of lack of jurisdiction of the learned Add. District Magistrate, Champhai District not being a Special Court so constituted under the Act, I am of the considered view that ends of justice would be satisfied if the respondent is granted liberty to move the Special Court having jurisdiction to try the instant case, with a prayer for granting bail. I order accordingly.

5. The accused/respondent is directed to appear and surrender before the learned Special Judge having jurisdiction to try such offences as alleged in Excise G.R. Case No. 118/2001 u/s 21 of the Act within a period of 1(one) month from today and shall prefer an application for bail, if so advised, before him who shall dispose of the said bail application in accordance with law.

6. Till the date of appearance and surrender, the accused/respondent shall not be taken into custody.

7. For the reasons, discussions and observations as indicated above, this Crl. Misc Application is hereby allowed.

8. An authenticated copy of this order be communicated to the respondent forthwith through the Excise Commissioner, Mizoram.