



Case No. Bail Appl. No. 09 of 2009.

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02.	11.12.09	<p style="text-align: center;"><b>BEFORE</b></p> <p style="text-align: center;"><b>HON'BLE MR. JUSTICE S. P. WANGDI, JUDGE</b></p> <p>Present : Mr. Vivek Anand Basnett, Advocate for the petitioner.</p> <p style="text-align: center;">Mr. Karma Thinlay, Additional Public Prosecutor with Mr. Santosh Kr. Chettri, Assistant Govt. Advocate for the State - Respondent.</p> <p style="text-align: center;">*****</p> <p>The petitioner has preferred this application for bail under section 439 of the Code of Criminal Procedure, 1973. He was arrested on 14.11.2009 in connection with Ranipool Police Station. Case No.45 of 2009 under section 9 of the Sikkim Anti Drugs Act, 2006 and has approached this Court since his application for bail filed before the Special Judge, Sikkim Anti Drugs Act, was rejected. Mr. Vivek Basnett, Learned Advocate appearing on behalf of the accused person submitted that the petitioner is an innocent person and the only basis upon which he was arrested was the FIR. Apart from this, it was submitted by him that the charge against the accused person cannot be sustained on account of the defective seizure of the controlled substance. The search and seizure conducted by the Police was in violation of section 24 of the Sikkim Anti Drugs Act, 2006. He further, submitted that the detention of the accused person could not be justified also on account of the fact that the co-accused in the</p>



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		<p>case was released on bail soon after his arrest. The last leg of his submission was that the accused ought to be released on bail as he is a patient of acute gastritis and also suffers from a serious leg injury.</p> <p>2. Mr. Basnett placed reliance on a Single Bench decision of the Orissa High Court reported in <b>1995 Criminal Law Journal 3083</b> in the matter of <b>Radha Krishana Singhari and Ors. Vs. State of Orissa</b> in which it was held in paragraph 4 thereof that:-</p> <p><b><i>"When the law prescribes stringent procedure for compliance in case of such serious nature of offence, it is always obligatory on the part of the investigating agency to strictly comply with the mandatory provisions so as to enable itself to prove the prosecution case to the hilt".</i></b></p> <p>Supplementing this argument the Learned Advocate referred to section 24 (2) of the Sikkim Anti Drugs Act, 2006 which prescribes inter-alia as follows:-</p> <p><b><i>"(2)When an officer duly authorized under Section 19 has reason to believe that it is not possible to take the person to be searched to the nearest gazetted officer or Magistrate without the possibility of the person to be searched parting with possession of any controlled substance or article or document, he may, instead of taking such person to the nearest gazetted officer or Magistrate, proceed to search the person as provided under Section 100 of the Code of Criminal Procedure, 1973."</i></b></p>



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		<p>Relying upon the above provision, it was submitted by him that the search was conducted in the absence of a gazetted officer when a large number of officers were available in the locality where the petitioner had been searched. It was therefore, submitted that the police having failed to comply with the mandatory requirement of law, the entire investigation would be a nullity and the petitioner was entitled to being enlarged on bail for that reason.</p> <p><b>3.</b> Mr. Karma Thinlay, Learned Additional Public Prosecutor, on the other hand, submits that since a large quantity of Spasmoproxyvon i.e., 288 (two hundred and eighty eight) capsules, were found in possession of the accused person and was seized from his body in presence of witnesses, there was clear prima-facie case of his having committed the offence. He further submitted that while considering an application for bail in matters pertaining to the present kind, it would be necessary to consider the permissible limits within which the Court can exercise its discretion and that the case being under the Sikkim Anti Drugs Act, 2006 the parameters provided under section 18 thereof have to be considered mandatorily by the Court.</p>



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		<p>4. Mr. Karma Thinlay, placed reliance upon the Judgement reported in <b>(2007) 7 SCC 798</b> in the matter of <b>Union of India Vrs. Shiv Shanker Kesari</b>, more particularly paragraphs 3 and 6, and submitted that bail can only be granted on fulfilment of two conditions i.e. (i) where there are reasonable grounds for believing that the accused is not guilty of the offence and (ii) that he is not likely to commit any offence while on bail.</p> <p>5. It was further submitted that if either of these two conditions was not satisfied, the bar in granting bail operates and the accused cannot be released on bail. He also placed reliance upon <b>(2004) 3 SCC 619</b> in the matter of <b>Narcotics Control Bureau Vrs. Dilip Pralhad Namade</b> and submitted that the nature of the embargo created under the law was keeping in view the deleterious nature of the offence, necessities of public interest and the normal tendencies of the persons involved in such network to pursue with their activities with greater vigour and make hay when at large.</p> <p>6. I have heard the rival contentions placed on behalf of the parties and in my considered view this is not a case where this Court is satisfied that there are</p>



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		<p>reasonable grounds for believing that the accused is not guilty of the offence and that he is not likely to commit any offence while on bail. As pointed out by the Learned Additional Public Prosecutor, the Seizure of the controlled substance i.e., the Spasmoproxyvon capsules, was made from the body of the petitioner/accused person which is evident from the seizure memo filed as annexure A-2 to the bail application, and that evidently such seizure took place in the presence of witnesses. The defect of the seizure as placed by Mr. Basnett, Learned Advocate, on behalf of the petitioner, does not appear to exist prima-facie when we consider the provisions of sub-section (2) of section 24 of the Sikkim Anti Drugs Act, 2006. This provision clearly stipulates that when an officer duly authorised under section 19 of Sikkim Anti Drugs Act has reason to believe that it is not possible to take the person to be searched to the nearest gazetted officer or Magistrate without the possibility of the person to be searched parting with possession of any controlled substance or article or document, he may, instead of taking such person to the nearest gazetted officer or Magistrate, proceed to search the person as provided under Section 100 of the Code of Criminal Procedure, 1973. At this stage it would not be proper for this Court</p>

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		<p>to go into the controversy as to whether or not the person to be searched could be taken to the nearest gazetted officer or Magistrate.</p> <p><b>7.</b> Prima-facie there exist evidence of seizure and the permissibility of such seizure under the law. This contention therefore, cannot be accepted at this stage and is rejected accordingly. The Learned Additional Public Prosecutor further submitted that the investigation of the case has since been completed and charge sheet has been filed in the Court of Special Judge, Sikkim Anti Drugs Act, 2006. In my view this also is another evidence by which a prima-facie case does exist against the accused person for having committed the offence. Section 18 of the Sikkim Anti Drugs Act, 2006 is almost in-verbatim reproduction of section 37 of the NDPS Act. Under sub-clause (ii) of clause (b) of section 37 of the NDPS Act negation of bail is the rule and its grant an exception. On reading section 18 of the present Act there do not appear to be any difference between the two provisions. The records of the case produced do not inspire confidence in this Court that the accused person, at this stage, is not guilty of having committed the offence and that he is</p>

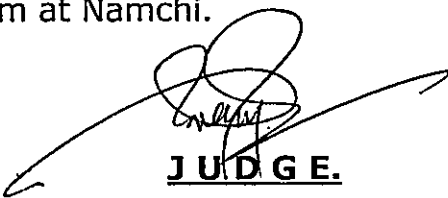


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		<p>not likely to commit the offence during the period when he is on bail.</p> <p><b>8.</b> The menace of the abuse of the controlled substance as defined under the Sikkim Anti Drugs Act, 2006 has been of serious concern of the society and it was with the object to address this that the Sikkim Anti Drugs Act, 2006 was passed by the legislature. This may not be construed as a conclusive finding that the accused person is guilty of having committed the offence. That would for the Special Court to decide after Trial. However, at this stage, this Court is of the prima-facie view that it would be a travesty of Justice to enlarge the accused on bail. I also do not see any other reason as to why the application for bail should be allowed.</p> <p>As regards the complaint of illness is concerned, the prosecution is directed to provide the accused person with necessary medical treatment if not already being provided.</p> <p><b>9.</b> Therefore, in the facts and circumstances, the application for bail stands rejected. It is made clear that the observations made in this order is not be construed as findings on the merit of he case.</p>



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		<p><b>10.</b> Before parting, this Court deems it essential to observe that the offence is punishable with imprisonment for six months, or with fine which may extend to Rs. 20,000/- (Rupees twenty thousand) or with both. As the accused person has been in custody for almost a month, it would be in the interest of Justice that the trial of the case is expedited so that it may be disposed of at least within a period of three months if not earlier. The Special Court, Sikkim Anti Drugs Act, East District, is directed to ensure that this case and cases of similar nature, are taken up with due priority so that the period of trial do not extend beyond the period of imprisonment, if the accused person is held guilty. That apart, expeditious and effective disposal of such cases would also fulfil the object of the Sikkim Anti Drugs Act, 2006 in curbing the abuse of controlled substance in the State and accelerate the reform process of the abusers of drugs.</p> <p><b>11.</b> A copy of this order be transmitted to the Court of the Special Judge, Sikkim Anti Drugs Act, East District at Gangtok, for information and compliance. A copy be also sent to the Court of Special Judge, Sikkim Anti Drugs Act, South &amp; West Sikkim at Namchi.</p> <p style="text-align: right;">   <b>JUDGE.</b> </p>