



THE HIGH COURT OF SIKKIM : GANGTOK

(Criminal Jurisdiction)

DATED : 19th January, 2021

SINGLE BENCH : HON'BLE MRS. JUSTICE MEENAKSHI MADAN RAI, JUDGE

Bail Appln. No.01 of 2021

Petitioner/Accused : Deepen Chettri

versus

Respondent : State of Sikkim

Application under Section 439
of the Code of Criminal Procedure, 1973

Appearance:

Mr. S.S. Hamal, Advocate for the Petitioner/Accused.

Mr. Hissey Gyaltsen, Assistant Public Prosecutor for the State-
Respondent.

O R D E R (ORAL)

Meenakshi Madan Rai, J.

1. The Petitioner herein is aged about 26 years and having been arrested in connection with Sadar Police Station (FIR) Case No.78 of 2020, dated 15.05.2020, under Sections 7(a)(b)/9/14 of the Sikkim Anti Drugs Act, 2006 ("SADA") read with Section 9(1)(b) of the Sikkim Anti Drugs (Amendment) Act, 2017, seeks to be enlarged on bail.

2. It is contended by Learned Counsel for the Petitioner that, in fact, no controlled substances as detailed in the Seizure Memo, were seized from the possession of the Petitioner, however, he was remanded to judicial custody from



30.11.2020 after his arrest on the same date. That, subsequent to that, the Petitioner applied for bail before the Learned Special Judge, SADA, 2006, East Sikkim at Gangtok, however, his Bail Petition was rejected vide Order dated 14.12.2020, passed in Criminal Misc. Case (SADA) Bail No.90 of 2020. That, presently due to the COVID-19 pandemic, there has been an alarming rate of cases detected amongst the inmates in State Central Jail, Rongyek, hence, he is not only at the risk of contracting the virus but is also unable to prepare his defence in the matter on account of his inability to contact his Lawyer due to the ensuing pandemic. That, he is innocent and has not committed the offence accused of. Learned Counsel further submits that if enlarged on bail, the Petitioner will make himself available on all dates fixed in the Court for the purposes of trial. That, in fact, Charge has been framed against the Petitioner under Rule 17(1) of the Sikkim Anti Drugs Rules, 2006 read with Sections 9(1)(a)(b)(c) and 9(4) of the SADA, 2006 and Section 34 of the Indian Penal Code, 1908, however, as per the Order of the Learned Trial Court, the first Prosecution Witness is summoned only on 07.06.2021 and till such date the trial is taken up, the Petitioner will be incarcerated despite his innocence. That, all that emanates in the Charge-Sheet to implicate the Petitioner, is the Statement of the co-accused Krishna Gopal Chettri and it is a settled position of law that the Statement of a co-accused is not substantive evidence against another accused.



On this count, reliance was placed on ***Surinder Kumar Khanna vs. Intelligence Officer Directorate of Revenue Intelligence***¹. Hence, the Petitioner be enlarged on bail on any terms and conditions deemed appropriate by this Court.

3. Resisting the arguments of Learned Counsel for the Petitioner, Learned Assistant Public Prosecutor for the State-Respondent submitted that the conduct of the Petitioner is also to be taken into account. Once the investigation commenced, the Petitioner was not traceable in his residence despite all efforts made by the Investigating Officer ("I.O."). In fact, the Petitioner remained untraceable for three months after the FIR was lodged and subsequently the I.O. arrested him on 30.11.2020 after having received source information about his whereabouts, since then he has been in judicial custody. That, the Petitioner was with the co-accused Krishna Gopal Chettri also named in the FIR on the relevant day and they had jointly procured the large quantity of controlled substances, as reflected in the Seizure Memo and hence the question of the Petitioner being innocent does not arise. Considering his conduct, should he be enlarged on bail, it is likely that he will not appear before the Court for the purposes of trial thereby delaying the trial and hindering justice and his Bail Petition thereby deserves a dismissal.

¹ (2018) 8 SCC 271



4. Due consideration has been given to the rival submissions of Learned Counsel for the parties and all documents perused.

5. On enquiry by this Court, it is admitted by the Learned Assistant Public Prosecutor that the Petitioner was unaware of the case having been registered against him and no Notice was issued to him to make an appearance before the concerned I.O. In such a circumstance, it is evident that the Petitioner was unaware of the registration of the case against him and therefore he cannot be foisted with the label of an absconder. That apart, it is also admitted and evident from the records placed before this Court today that none of the controlled substances i.e. 85 bottles of 100 ml Relax Cof. T Cough Syrup, 80 tablets of Nitrosun-10 and 544 capsules of Winspasmo, were seized from the specific possession of the Petitioner. In fact, all that the Prosecution is relying on at this stage, as stated before this Court, are the Section 161 Cr.P.C. Statement of one Abhijit Tamang who was not a witness to the offence, one Bir Bahadur Tamang who has not identified the Petitioner and the co-accused Krishna Gopal Chettri. The settled position of law in the ratiocination *supra* relied on by Learned Counsel for the Petitioner, needs no reiteration with regard to the Statement of an accused and its repercussions on another accused.

6. This Court is well aware and alive to the circumstances of the sale and consumption of controlled



substances by the youth specifically and consumption by children as young as eight years old and people of all other age groups as well. It is indeed concerning that the consumers become victims of substance abuse which is sold by persons out to make a quick buck with no conscience whatsoever. They are oblivious to the deleterious and negative effects on the users, the unsuspecting family and the society at large. At the same time, the Statement of a co-accused or the unsubstantiated Statement of witnesses, at this stage, does not suffice to deprive the Petitioner of his liberty.

7. In view of the facts and circumstances as laid out *supra* and the observations made hereinabove, I am of the considered opinion that this is a fit case where the Petitioner can be enlarged on bail. It is thus ordered that the Petitioner be released on bail on furnishing PB&SB of Rs.50,000/- (Rupees fifty thousand) only, each, subject to the following conditions:

- (i) He shall report to the SHO, Melli Police Station every morning at 10 a.m.;
- (ii) He shall not make attempts to contact the co-accused or witnesses pertaining to the instant matter;
- (iii) He 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/them to disclose such facts during trial;



(iv) He shall not leave the jurisdiction of Melli Police Station without the specific written permission of the SHO, Melli Police Station who shall, in turn, inform the I.O. of the case, of the whereabouts of the Petitioner; and

(v) He shall appear before the Learned Trial Court on every date fixed for trial.

Should the Petitioner fail to report to the concerned SHO, Melli Police Station every morning at 10 a.m. or fail to appear before the Learned Trial Court on every date fixed for trial, his Bail Bonds shall stand cancelled and he shall be taken into custody forthwith.

8. The observations made hereinabove are only for the purposes of the instant Bail Petition and shall not be construed as a finding on the merits of the matter which shall be considered at the time of trial. The Learned Trial Court shall consider evidence placed by the Prosecution at the time of trial unhindered by any observations made by this Court *supra*.

9. The Bail Appln. stands disposed of.

10. Copy of this Order be sent to the Learned Trial Court, for information.

(Meenakshi Madan Rai)
Judge
19.01.2021