



Bail Application No. 07 of 2021  
Sagar Pradhan v. State of Sikkim

**THE HIGH COURT OF SIKKIM: GANGTOK**  
**(Criminal Jurisdiction)**

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SINGLE BENCH: HON'BLE MR. JUSTICE BHASKAR RAJ PRADHAN, JUDGE  
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**Bail Application No. 07 of 2021**

Sagar Pradhan,  
Son of Kamal Pradhan,  
Resident of Arithang,  
P.O. & P.S. Gangtok, East Sikkim.

*At present: State Jail, Rongyek,*  
*Gangtok, East Sikkim* .... Applicant

**versus**

State of Sikkim .... Respondent

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

**Appearance:**

Mr. D. P. Luitel, Advocate for the Applicant.

Mr. Hissey Gyaltzen, Assistant Public Prosecutor for  
the State Respondent.

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Date of hearing : 05.04.2021 & 07.04.2021

Date of Order : 15.05.2021

**ORDER**

**Bhaskar Raj Pradhan, J**

**1.** This bail application has been filed by the applicant, one of the three co-accused persons facing trial under the Sikkim Anti Drugs Act, 2006 (SADA, 2006). The facts



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necessary for the decision of this application is being narrated.

**2.** On 15.05.2020, an FIR was lodged before the Sadar Police Station, Gangtok, stating that on 15.05.2020, at around 1720 hours, beat 25 informed over WT set that one unknown person along with a bedding case was detained by some locals near Tadong Senior Secondary School and reported that he was suspected to be carrying contraband substances in it. The informant, as per the direction of the Station House Officer (SHO), visited the locality and conducted inquiry. Krishan Gopal Chettri along with the bedding case, was found to be guarded by beat police and the locals, who reported that they had seen two persons carrying a bedding case in a suspicious manner. When they inquired from them, one of the person ran away. They managed to detain Krishna Gopal Chettri and informed the beat personnel, who conducted the search and seizure. The following items were seized from inside the bedding case carried by Krishna Gopal Chettri:-

- “1. 85 bottles of Relax cof T cough syrup bearing batch no.07108-SD2, mfg. Oct.2018, Exp: Sept, 2020 marked as exhibit A. Out of 85 bottles one bottle was taken out packed & sealed separately and marked as exhibit S1.*
- 2. 68 phials of blue colored WINSPASMO capsules bearing batch no. WBS19012, Mfg.*

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*Aug. 2019, Exp. July 2021, each phial containing 08 capsules, totaling 544 capsules marked as exhibit B. Out of 68 phials one phial was taken out packed & sealed separately and marked as exhibit S2.*

3. *08 phials of Nitrosun 10 tablets bearing batch no. AB04703, Mfg. 12/2019, Exp.11/2022, each phial containing 10 tablets totaling 80 tablets. Out of 8 phials one phial was taken out packed & sealed separately and marked as exhibit S3.”*

**3.** On completion of the investigation, charge-sheet was filed on 19.07.2020 on finding *prima facie* case under Section 7 (a)(b)/9/14 of the Sikkim Anti Drugs Act, 2006 read with Section 9(1)(b) of the Sikkim Anti Drugs (Amendment) Act, 2017 and Section 34 of the Indian Penal Code, 1860 (IPC) against the accused Krishna Gopal Chettri, Dipen Chettri and the applicant for intra-state illicit trafficking of contraband substances without any valid medical prescription issued by a registered medical practitioner.

**4.** On 24.12.2020, the learned Special Judge, (SADA, 2006), East Sikkim at Gangtok, framed four charges against the applicant under Section 9(1)(c) of the SADA, 2006 read with Section 34 IPC; Section 9(1)(a) of the SADA, 2006 read with Section 34 IPC; Section 9(1)(b) of the SADA, 2006 read with Section 34 IPC and Section 9(4) of the SADA, 2006 read with Section 34 IPC.

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**5.** On the same date, the learned Special Judge directed the examination of the prosecution witnesses from 07.06.2021 till 17.06.2021. Therefore, the prosecution witnesses are yet to be examined.

**6.** The applicant has made two futile attempts for securing his bail from the learned Special Judge. On 02.02.2021, the second bail application was rejected on the grounds that his involvement in the case could not be ruled out and that charges, after having found *prima facie* case, had been framed.

**7.** It transpires that on the failure of the prosecution to file the charge-sheet within the stipulated time, Krishna Gopal Chettri was granted default bail under Section 167(2) of the Cr.P.C. on 14.08.2020. Deepen Chettri, the other co-accused, was granted regular bail by this Court on 19.01.2021.

**8.** The learned counsel for the applicant submits that the applicant has been languishing in the State Jail from 13.11.2020, i.e., the date he was arrested, till now on mere suspicion. The charge-sheet having been filed, the only material pressed against him is the statement of the co-accused Krishna Gopal Chettri recorded under Section 161 of the Cr.P.C., which is a weak piece of evidence. It is



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submitted that in the present case both the co-accused are on bail and on the grounds of parity itself, the applicant is also entitled to bail.

9. *Per contra*, Mr. Hissey Gyaltzen, learned Assistant Public Prosecutor (APP), submits that the statement of the co-accused Krishna Gopal Chettri clearly implicates the applicant. Besides the statement of the co-accused, attention was also drawn to the statement of one Abhijit Tamang recorded under Section 161 Cr.P.C., which according to the learned APP also implicates the applicant. The learned APP also drew the attention of this Court to Section 18 of the SADA, 2006 and submitted that the applicant had failed to satisfy this Court 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. He referred to ***State of M.P. vs. Kajad***<sup>1</sup>; ***Union of India vs. Shiv Shanker Kesari***<sup>2</sup> and ***Union of India and Anr. vs. Sanjeev V. Deshpande***<sup>3</sup>, in which the Supreme Court considered Section 37 of the NDPS Act, which is in *pari-materia* to Section 18 of the SADA, 2006. He also referred to the judgment of this Court in ***Ganesh Sharma @ Gelal v.***

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<sup>1</sup> (2001) 7 SCC 673

<sup>2</sup> (2007) 7 SCC 798

<sup>3</sup> (2014) 13 SCC 1



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**State of Sikkim**<sup>4</sup>, in which Section 18 of SADA, 2006 was considered.

**10.** Mr. Luitel submitted that the facts in the present case are completely different to the case referred to by the learned APP.

**11.** In **Kajad** (supra), the Supreme Court while examining Section 37 of the NDPS Act, held:

**“5.** ..... The purpose for which the Act was enacted and the menace of drug trafficking which it intends to curtail is evident from its scheme. A perusal of Section 37 of the Act leaves no doubt in the mind of the court that a person accused of an offence, punishable for a term of imprisonment of five years or more, shall generally be not released on bail. Negation of bail is the rule and its grant an exception under sub-clause (ii) of clause (b) of Section 37(1). For granting the bail the court must, on the basis of the record produced before it, be satisfied that there are reasonable grounds for believing that the accused is not guilty of the offences with which he is charged and further that he is not likely to commit any offence while on bail. It has further to be noticed that the conditions for granting the bail, specified in clause (b) of sub-section (1) of Section 37 are in addition to the limitations provided under the Code of Criminal Procedure or any other law for the time being in force regulating the grant of bail. Liberal approach in the matter of bail under the Act is uncalled for.”

**12.** In **Shiv Shanker Kesari** (supra), the Supreme Court held:

**“6.** As the provision itself provides that no person shall be granted bail unless the two conditions are satisfied. They are; the satisfaction of the court that there are reasonable grounds for believing that the accused is not guilty and that he is not likely to commit any offence while on bail. Both the conditions have to be satisfied. If either of these two conditions is not satisfied, the bar operates and the accused cannot be released on bail.”

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<sup>4</sup> Judgment (oral) dated 25.01.2021 of the High Court of Sikkim in Bail Application No. 12 of 2020



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*“11. The court while considering the application for bail with reference to Section 37 of the Act is not called upon to record a finding of not guilty. It is for the limited purpose essentially confined to the question of releasing the accused on bail that the court is called upon to see if there are reasonable grounds for believing that the accused is not guilty and records its satisfaction about the existence of such grounds. But the court has not to consider the matter as if it is pronouncing a judgment of acquittal and recording a finding of not guilty.”*

**13.** In **Sanjeev vs. Deshpande** (supra), the Supreme Court held:

*“5. Section 37 of the Act stipulates that all the offences punishable under the Act shall be cognizable. It further stipulates that:*

*(1) persons accused of an offence under Sections 19, 24, 27-A or persons accused of offences involved in “commercial quantity” shall not be released on bail, unless the Public Prosecutor is given an opportunity to oppose the application for bail; and*

*(2) more importantly that unless “the Court is satisfied that there are reasonable grounds for believing” that the accused is not guilty of such an offence. Further, the Court is also required to be satisfied that such a person is not likely to commit any offence while on bail.*

*In other words, Section 37 departs from the long established principle of presumption of innocence in favour of an accused person until proved otherwise.”*

**14.** The prosecution case seems to be that after the three accused persons named in the charge-sheet had collected the contraband substances, Krishna Gopal Chettri and the applicant were intercepted by the locals - Bir Bahadur Tamang and Karma Pintso Bhutia, on suspicion that they were carrying a bedding case. It is their case that when they made inquiries, the applicant fled but Krishna Gopal Chettri was apprehended. It is further alleged that when

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search was conducted, contraband substances were recovered from the bedding case in the possession of Krishna Gopal Chettri.

**15.** This Court has gone through the statement of Krishna Gopal Chettri, the co-accused, recorded under section 161 Cr.P.C. The statements recorded under Section 161 Cr.P.C. of Bir Bahadur Tamang and Karma Pintso Bhutia, are also on record. The statements of Abhijit Tamang has also been perused. These statements on their own do not connect the present applicant to the seizure. There is no identification of the applicant by any of the witnesses, as the person who had fled away when Krishna Gopal Chettri was apprehended. Krishna Gopal Chettri, being a co-accused, his statement can be used only to lend assurance to other evidence against the applicant. However, such material seems lacking. While Krishna Gopal Chettri is on a default bail, the other co-accused - Deepen Chettri, who was similarly placed, has been granted bail by this Court under Section 439 of the Cr.P.C. on 19.01.2021.

**16.** At this juncture, it would be relevant to note that Section 18 of SADA, 2006, *inter alia*, provides that no person accused of an offence punishable under the Act shall be released on bail or on his own bond unless the



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court is satisfied that there are reasonable grounds of believing that the applicant is not guilty of such offence and that he is not likely to commit any offence while on bail. In **Ganesh** (supra), this Court had examined the provision of Section 18 of SADA 2006 and found it to be in *pari materia* to Section 37 of the NDPS Act, 1985. This Court, following the judgments of the Supreme Court in **Narcotics Control Bureau vs. Kishan Lal & Ors.**<sup>5</sup>; **Intelligence Officer, Narcotics C. Bureau vs. Sambhu Sonkar & Anr.**<sup>6</sup>; **Narcotics Control Bureau vs. Dilip Pralhad Namade**<sup>7</sup> and **Collector of Customs, New Delhi vs. Ahmadaliev Nodira**<sup>8</sup>, held that the words “reasonable grounds” in Section 18 of SADA 2006 would have the same meaning as has been explained by the Supreme Court while interpreting Section 37 of the NDPS Act, 1985. This Court held that it would connote substantial probable cause for believing that the accused is not guilty of the offences charged and that this reasonable belief contemplated in turn would point to the existence of such facts and circumstances as are sufficient to justify recording of satisfaction that the accused is not guilty of the offences charged. The judgment of the Supreme Court relied upon by the learned APP also holds that for granting bail, the court must, on the basis of the records produced

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<sup>5</sup> (1991) 1 SCC 705

<sup>6</sup> (2001) 2 SCC 562

<sup>7</sup> (2004) 3 SCC 619

<sup>8</sup> (2004) SCC (Cri.) 834

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before it, be satisfied that there are reasonable grounds for believing that the accused is not guilty of the offences with which he is charged and further that he is not likely to commit any offence while on bail.

**17.** The evidence is yet to be led by the prosecution. From a perusal of the probable evidence filed along with the charge-sheet, at this juncture, it cannot be said with certainty whether it was the appellant who had run away when Krishna Gopal Chettri was apprehended. There is no substantial material to connect the appellant to the alleged crime. There is therefore, reasonable ground for believing, at this stage, that the applicant is not guilty of the alleged offences. The charge-sheet does not indicate the applicant's involvement in any previous criminal case. The learned APP has also not pointed out any circumstance from the records of the case that he is likely to commit any offence while on bail. The records reveal that the applicant is only 24 years old and has been incarcerated for more than five months. This Court is, thus, of the considered view that the applicant is entitled to bail.

**18.** Accordingly, the applicant is granted bail on his furnishing security to the satisfaction of the learned Special



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Judge, SADA, 2006, East Sikkim, on the following conditions:-

**(i)** The applicant shall not leave the jurisdiction of the Sadar Police Station, Gangtok, without the written permission of the Investigating Officer.

**(ii)** He shall report to the Station House Officer (SHO) of the Sadar Police Station, Gangtok, every Monday at 10.30 a.m. If the date fixed by the learned Special Judge for the trial of the case falls on a Monday, he shall report on the next working day, at the same time, on which day he is not required for the trial.

**(iii)** He shall stay away from the prosecution witnesses during the period of trial and not attempt to influence them or even contact them, directly or indirectly.

**(iv)** He shall appear before the learned Special Judge, on every date fixed for trial.

**(v)** He shall give his cell phone number to the Investigating Officer and shall not change it



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without the permission of the learned Special Judge.

**(vi)** Once the trial begins, he shall not in any manner delay the trial.

**(vii)** If he violates any of the terms, the Investigating Officer shall be entitled to apply to the Special Judge for cancellation of the bail.

**19.** The application for bail is allowed and accordingly disposed of.

**( Bhaskar Raj Pradhan )**  
**Judge**

Approved for reporting : **Yes**  
Internet : **Yes**

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