



THE HIGH COURT OF SIKKIM : GANGTOK
(Criminal Jurisdiction)

DATED : 16th APRIL, 2021

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

Bail Appln. No.08 of 2021

Petitioner : Rohit Tamang

versus

Respondent : State of Sikkim

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

Appearance

Mr. Leonard Gurung, Advocate for the Petitioner.

Mr. Yadev Sharma, Additional Public Prosecutor with SI Manish Gurung, Investigating Officer, for the State-Respondent.

O R D E R (ORAL)

Meenakshi Madan Rai, J.

1. The Petitioner, aged about 36 years, is accused of the offence under Section 7, 9(1)(c) and 14 of the Sikkim Anti Drugs Act, 2006 (SADA, 2006) read with Section 506 of the Indian Penal Code. Jorethang PS FIR Case No.7 of 2021, dated 31-01-2021, was registered against him on the basis of a Complaint lodged by the SHO, Jorethang Police Station. The Petitioner was arrested on 17-02-2021 and is presently in judicial custody, hence the instant Bail Petition.

2. Learned Counsel for the Petitioner submits that the Prosecution allegation is that the Petitioner was seen with the controlled substances, seized vide Annexure 6, the Property Seizure Memo, by two Police personnel on an abandoned road at 'Bharikhola', Jorethang. No photographs of the Petitioner or the



controlled substances were taken by the two Police personnel to substantiate this allegation. Stones allegedly pelted at the Police personnel and the *khukhuri* with which the Petitioner was said to have threatened them have not been seized. Annexure 6 reveals the location from where seizure of the controlled substances were made but the Petitioner's name finds no mention therein. In such circumstances, the Petitioner cannot be foisted with the offences reflected in the FIR. The SHO had taken the witnesses along with him for the purposes of seizure of the controlled substances rendering the seizure suspicious as the witnesses could well have been tutored by the Prosecution. Two persons, namely, Sanjay Subba and Padam Bahadur Sanyasi, were found roaming at the place where the seizures were made. They were accordingly arrested and their vehicle was seized. The vehicle does not belong to the Petitioner, consequently none of the circumstances enumerated by the Prosecution connects the Petitioner to the offence. The allegation that the Petitioner was absconding is preposterous as in fact on 03-02-2021 he had taken his family and gone to Delhi. No intimation was made to the Petitioner requiring his presence before the Police either on 03-02-2021 or any other date prior in time. The Petitioner who is innocent, is a Carpenter by profession, belongs to a respectable family and has no criminal antecedents. He is the only earning member of his family comprising of his wife and minor sons aged 7 years and 18 months respectively and his incarceration would adversely affect them, besides, his sons are presently unwell and he is required to facilitate their treatment. That, the Petitioner may be enlarged on bail in



consideration of the above circumstances, on any terms and conditions.

3. Repudiating the contention of Learned Counsel for the Petitioner, it is submitted by Learned Additional Public Prosecutor that the Petitioner was at the place of occurrence with the controlled substances from where he absconded on being seen by the two Police personnel, leaving behind the controlled substances, which were subsequently seized by the Police. The arrest of the Petitioner took place only on 17-02-2021, on account of the fact that there were three other persons involved in the offence with the Petitioner for which steps were taken simultaneously by the concerned Investigating Officer (I.O.). On 03-02-2021, on enquiry, the I.O. was informed by the Petitioner's sister that he had left for Delhi. Upon ascertaining his exact movements and location he was traced in Delhi from where he was arrested on 17-02-2021. That, the offence is grave and the controlled substances are valued at approximately Rs.22,00,000/- (Rupees twenty two lakhs) only, in the open market. That, the Learned Trial Court considering the facts and circumstances had correctly disallowed the Bail Applications of the Petitioner. That, now the Charge-Sheet has been submitted before the Learned Trial Court on 29-03-2021. The RFSL Report which was awaited has been received yesterday and shall be filed before the Learned Trial Court by tomorrow. Should the Petitioner be enlarged on bail the Prosecution apprehends that he will abscond as he is a permanent resident of West Bengal. Besides which, not only would it thwart the course of justice but enlarging him on bail would send a wrong message to society at large when he is found indulging in activities deleterious to the society.



4. Having given due consideration to the rival submissions of Learned Counsel for the parties, it is to be reiterated here that indiscriminate sale and consumption of controlled substances is a continuing bane of our society. Not only are the youth being led astray by consumption and sale of controlled substances they are dropping out of school or colleges thereby not only ruining their future prospects but also leading to a deterioration of their quality of life, both physical and mental. That apart, it also embroils the unsuspecting family of the substance abuser to a life of misery and travails which has a direct bearing on their mental health and happiness quotient. The sale of controlled substances fructifies in easy money sans effort and unconscionable people indulge in it with nary a care to the consequence it results in so long as it meets their objective. The negative impact of the sale and consumption of controlled substances also affects the society at large whose interests cannot be ignored or sidelined. These points definitely need to be factored in while considering cases for bail under the SADA, 2006, as is the instant one.

5. The Supreme Court while being concerned with the menace of dangerous drugs flooding the market observed as follows in *Union of India vs. Ram Samujh and Another*¹;

"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.

¹ (1999) 9 SCC 429



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."

[emphasis supplied]

6. Further, in *State of Kerala and Others* vs. *Rajesh and Others*² the Supreme Court held as follows;

"**17.** The jurisdiction of the court to grant bail is circumscribed by the provisions of Section 37 of the NDPS Act. It can be granted in case there are reasonable grounds for believing that the accused is not guilty of such offence, and that he is not likely to commit any offence while on bail. It is the mandate of the legislature which is required to be followed. At this juncture, a reference to Section 37 of the Act is apposite. That provision makes the offences under the Act cognizable and non-bailable. It reads thus:

"**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 offences under Section 19 or Section 24 or Section 27-A 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

(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." (emphasis supplied)

.....

² (2020) 12 SCC 122



19. The scheme of Section 37 reveals that the exercise of power to grant bail is not only subject to the limitations contained under Section 439 CrPC, but is also subject to the limitation placed by Section 37 which commences with non obstante 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, unless twin conditions are satisfied. The first condition is that the prosecution must 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. If either of these two conditions is not satisfied, the ban for granting bail operates.**

20. The expression "reasonable grounds" means something more than prima facie grounds. 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 are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence. In the case on hand, the High Court seems to have completely overlooked the underlying object of Section 37 that in addition to the limitations provided under the CrPC, or any other law for the time being in force, regulating the grant of bail, its liberal approach in the matter of bail under the NDPS Act is indeed uncalled for."

[emphasis supplied]

The observations made and extracted *supra* explicitly apply to the matter at hand, the principles of Section 37 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act) being embodied in Section 18(1)(ii) of the SADA, 2006.

7. Having considered the facts and circumstances placed before me and having examined all documents on record, it must be mentioned firstly that the medical report of the children of the Petitioner is of no assistance to him as it is evidently flu that they were suffering from which required no hospitalisation. It is now almost a month since the medical reports were prepared and no untoward incidents have occurred. It needs no reiteration that apart from the above circumstances, the nature and gravity of the offence, the penalty likely to be imposed on the Petitioner if convicted of the offence charged with, apprehension of the accused absconding and thereby thwarting the course of justice, previous criminal antecedents, if any, of the accused and his position and



standing in society as well as apprehension of the offence being committed and witnesses being influenced are required to be extended due consideration.

8. As already discussed the offence is grave and heinous as it deals with selling of controlled substances. The penalty, if found guilty, is high. There is an apprehension that the Petitioner could abscond being a resident of West Bengal, making it difficult for the Prosecution to secure his presence at the trial. Over and above these points, the quantity of the controlled substances recovered is gargantuan which is deleterious to the interest of society at large. Resultant, I am of the considered opinion that the Petitioner does not deserve to be enlarged on bail.

9. However, in view of the fact that the Charge-Sheet has already been submitted, let the trial commence after the RFSL Report is filed in the relevant Court. The Learned Trial Court shall made all efforts to dispose of the matter within eight months from the date of filing of the RFSL report.

10. The Bail Appln. stands rejected and disposed of accordingly.

11. The observations made herein above are only for the purposes of this Bail Application and shall have no bearing on the merits of the case.

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

(Meenakshi Madan Rai)
Judge

16-04-2021

Approved for reporting : **Yes**