

THE HIGH COURT OF SIKKIM : GANGTOK
(Criminal Jurisdiction)

SINGLE BENCH: THE HON'BLE MR. JUSTICE BHASKAR RAJ PRADHAN, JUDGE

Bail Application No. 09 of 2020

Tshering Ganjay Lachungpa,
S/o late Thong Phook Lachungpa,
Age about 33 years,
Permanent resident of Bichhu,
Lachung, North Sikkim.

Temporarily residing at:
Bojoghari, Near SBI,
Gangtok, East Sikkim.

*Presently lodged at Central Prison,
Rongyek, East Sikkim.*

..... Applicant

Versus

State of Sikkim

..... Respondent

**Application for Bail under Section 439 of the Code of
Criminal Procedure, 1973 read with Section 37 of SADA,
2006,**

Appearance:

Mr. Leonard Gurung and Mr. Shakil Karki, Advocates
for the Applicant.

Mr. Thinley Dorjee Bhutia, Additional Public
Prosecutor.

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

Date of hearing : 04.11.2020

Date of Order : 11.11.2020

ORDER

Bhaskar Raj Pradhan, J.

1. This is an application for bail filed by the
applicant under Section 439 of the Code of Criminal

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Procedure, 1973 (Cr.P.C.) read with Section 37 of Sikkim Anti Drugs Act, 2006 (SADA, 2006).

2. The First Information Report (FIR) against the applicant was lodged on 07.10.2020 before the Rangpo, Police Station alleging that on 07.10.2020 while on a routine checking at the Rangpo check post the applicant was intercepted in a Siliguri- Gangtok bound incoming commercial vehicle bearing registration number SK01J-0042 under suspicious circumstances. The applicant was searched in the presence of two witnesses and the SDPO/Rangpo after he exercised his option under Section 24 of the SADA 2006. During the search the following items were seized:-

- “ i) 45 bottles of OWNREX cough syrup having batch no.020620-SH2, mfg. June 2020, exp. May 2022 (Each bottle contains 100 ml, thus 45x100=4500 ml)*
- ii) 10 files of Nitrosun-10 having batch no. AB32109, mfg 03/2020, exp 02/2023 totalling of 98 tablets (02 tablets consumed)*
- iii) 33 files of Spasmoproxyvon plus totalling of 787 capsules having batch no. JU10711, mfg Nov/2019, Exp. Oct 2021 (05 capsules consumed)*
- iv) One green folder containing a) 02 sheets of STNM Medical card issued in the name of Tshering G. Lachungpa, b) Court appearance certificate issued to CT. Tshering Lachungpa.*
- v) Police Track suit (one set)*
- vi) Purple luggage trolley labelled Safari with check in tag of Airport having named Tshering Lachungpa.”*

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3. It was alleged that the applicant was not able to produce any valid license under the Drugs and Cosmetics Act, 1940 or the Sikkim Trade License Act and the prescription of a qualified medical practitioner. Thereafter, the aforesaid items were seized and the applicant was arrested under Section 7(a)7(b)/9 and 14 of the SADA, 2006.

4. The applicant preferred a bail application before the learned Special Judge, SADA, 2006 East Sikkim at Gangtok (the learned Special Judge) which was rejected on 14.10.2020. The applicant had prayed for bail mainly on the ground of undergoing treatment for de-addiction in a detoxification/rehabilitation centre. The learned Special Judge held that there is nothing to indicate that the applicant was dependent on drugs or was a habitual consumer as nothing was brought on record before him. It was held that substantial quantity of controlled substances had been recovered from the applicant and that the investigation was still under progress. On these grounds the bail application of the applicant was rejected by the learned Special Judge.

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5. The present bail application was filed on 17.10.2020. It is urged that the applicant is a 33 years old law abiding and a responsible citizen having no past criminal records and a permanent resident of Bichhu, Lachung, North Sikkim. It is stated that he has been falsely implicated in the case; he has to take care of his 55 years old ailing mother and his father having died on 16.09.2020 he has been traumatized with psychological problems and mental health concomitant disorders. He seeks voluntarily rehabilitation and detoxification for his drug dependency and for which purpose he has also sought admission to FREEDOM rehabilitation centre. The applicant states that he had applied for bail before the learned Special Judge but it was rejected on the ground that the investigation was still under process and there was no document to indicate that the applicant was dependent on drugs. The applicant further states that the fact that he has been forwarded to judicial custody on 08.10.2020 indicates that the investigation is over and his incarceration further would cause him mental health and harm his reputation. It is urged that custodial interrogation and search and seizure being completed, the applicant is no longer required in custody. The applicant assures not to tamper with the

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prosecution evidence/witnesses; cooperate with the investigation; not evades the process of law and to face the trial. The applicant further assures that if bail is granted he would not violate any terms and conditions which may be imposed and is willing to furnish reliable surety.

6. A reply dated 02.11.2020 has been filed by the respondent opposing the application for bail on various legal grounds. It is urged that there is no material placed to shown that he is an “*addict*” dependent on drugs to get the advantage of Section 37 of the SADA, 2006. In the reply it has been pointed out that the applicant was intercepted at Rangpo check post attempting to bring in commercial quantities of controlled substances into the State and the same could not compute a reasonable proportion for individual use/consumption. It is further pointed out that the investigation is at the initial stage and there is every possibility of the applicant tampering with evidence. It is urged that if the application is allowed there is a high probability that the applicant might be involved in peddling of the controlled substances again. It is also pointed out that the applicant is a police personnel.

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7. Heard Mr. Leonard Gurung assisted by Mr. Sakil Karki, learned counsel on behalf of the applicant and Mr. Hissey Gyaltzen, learned Assistant Public Prosecutor on behalf of the respondent.

8. Mr. Leonard Gurung relied upon the judgments of the Supreme Court in *Dataram Singh v. State of U.P.*¹ and *Sanjay Chandra v. CBI*² as well as the judgment of the Punjab & Haryana High Court in *Gurjit Singh v. State of Punjab*³.

9. In *Dataram (supra)* the Supreme Court held that a fundamental postulate of criminal jurisprudence is the presumption of innocence. It was held that another important facet is that grant of bail is the general rule and putting a person in jail is an exception. The Supreme Court held that although grant or denial of bail is entirely the discretion of the judge considering a case but even so, the exercise of judicial discretion has been circumscribed by large number of decisions rendered by the Supreme Court and even by every High Court in the country. Humane attitude was required to be adopted by a judge, while

¹ (2018) 3 SCC 22

² (2012) 1 SCC 40

³ MANU/PH/3876/2012

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dealing with application for remanding a suspect or an accused to police custody or judicial custody. One of the factors, it was held, that needed to be considered was whether the accused was arrested during investigation when that person perhaps has the best opportunity to tamper with evidence or influence witnesses.

10. In *Sanjay Chandra (supra)* the Supreme Court held that gravity of alleged offence and severity of punishment prescribed ought to be considered simultaneously and gravity alone cannot be decisive ground to deny bail. It was held that competing factors were to be balanced by court while exercising its discretion. While reiterating the principles for exercise of court's discretion, it was also held that each case however, was to be decided on its own merits.

11. Section 439 Cr.P.C. provides for concurrent jurisdiction of the Sessions Court and the High Court. On a perusal of the order dated 14.10.2020 passed by the learned Special Judge it seems clear that the applicant had moved for bail on similar grounds which was rejected. The only new circumstance which has been indicated in the present application for bail is that the investigation is over.

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On a query made, the learned Assistant Public Prosecutor submitted that except for securing the forensic report on the seized substances, investigation is more or less over and it would take at least six weeks to file its report under Section 173 Cr.P.C.

12. The applicant has been accused of transporting and having in his possession commercial quantities of controlled substances and is being proceeded under Section 7(a)7(b)/9 and 14 of SADA, 2006. The preliminary materials does not indicate that the applicant, a police officer was transporting commercial quantities of controlled substances for his personal consumption. According to the respondent the applicant is a serving police officer and therefore, there is a possibility of the applicant tampering with evidence. The respondent is also anxious that the applicant may resort to further peddling of controlled substances if enlarged on bail at this stage. The applicant, admittedly, has been in custody for 28 days. The fact that he is a serving police officer is also not in dispute. Prima facie he was intercepted with commercial quantities of controlled substances. If the allegations are proved the applicant may suffer punishment with imprisonment for 10 years or more. The scheme of SADA, 2006 makes the

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commission of the offence by a Government servant graver. As the applicant is a police officer it cannot be said that the apprehension of the respondent that he may tamper with evidence is without any basis as the charge sheet is yet to be filed. This is a case in which the learned Assistant Public Prosecutor has opposed the bail application. At the same time there is no reasonable ground for believing that the applicant is not guilty of the alleged offence.

13. Considering the entirety of the facts and circumstances of the case this court is of the considered view that bail cannot be granted to the applicant at this stage. It is accordingly rejected.

14. However, keeping in mind the submissions made on behalf of the applicant that he is in need of rehabilitation and detoxification for his drug dependency, the respondent is directed to have the applicant assessed by a psychiatrist and the State Medical Board for appropriate recommendations.

Sd/-
(Bhaskar Raj Pradhan)
Judge

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

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