



HIGH COURT OF SIKKIM
Record of Proceedings

Bail Appln. No.11 of 2021

DURGA GUPTA @ GOLU

APPLICANT

VERSUS

STATE OF SIKKIM

RESPONDENT

Date: 02.09.2021

CORAM:

THE HON'BLE MRS. JUSTICE MEENAKSHI MADAN RAI, A.C.J.

For Applicant

Mr. Tsewang Namgyal,
Advocate.

For Respondent

Mr. S.K. Chettri, Additional
Public Prosecutor.
S.I. Naresh Chhetri, I.O. of the
case.

O R D E R (ORAL)

1. The Applicant herein, aged about 38 years, was arrested by the Sadar Police Station on 26.06.2021, in connection with Sadar Police Station Case No.79 of 2021 of the same date, under Sections 9 (1)(c)/14 of the Sikkim Anti Drugs Act, 2006 (SADA, 2006) and Sections 22(b)/27 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act, 1985) read with Section 34 of the Indian Penal Code, 1860. Since then he has been in Judicial Custody.

2. Learned Counsel for the Petitioner submits that the Petitioner had filed two separate Bail Applications before the Court of the Learned Special Judge, SADA, 2006, East Sikkim at Gangtok being *Crl. Misc. Case (SADA) Bail No.74 of 2021* and the Court of the Learned Special Judge, NDPS Act, 1985, East Sikkim at Gangtok being *Criminal Misc. Case (NDPS) (Bail) No.22 of 2021*. Both the Applications were rejected vide Orders dated 06.08.2021 and



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09.08.2021, respectively. That, the Petitioner has been falsely implicated in the instant matter by his elder brother, one Krishna Gupta, in connivance with the Police party conducting the search and seizure due to the acrimonious relations that he has with his elder brother. That, in fact, the premises that the Petitioner is residing in is the Fifth Floor of the seven storeyed building, whereas the controlled substances were recovered from the Sixth Floor of the building which is the residential premises of his elder brother and his family. That, neither the FIR nor the Seizure Memo reflect the seizure as having been made from his residential premises. That, the elder brother of the Petitioner runs a Medical Store and has a Licence for procuring medicines and therefore collected the controlled substances and with the assistance of the Police and one Yesar Arfat, implicated him falsely in the instant matter. That, the Petitioner was also threatened by the Police at the Sadar Police Station that he would be incarcerated for a long time on account of the various Complaints lodged by his elder brother before the Police Station. That, his elder brother, in fact, shares acrimonious relations not only with him but also with his married elder sister. That, Yesar Arfat, whose name is reflected in the FIR and who informed the Police that he had procured the controlled substances from the Petitioner, is the husband of an employee in the Medical Shop of his elder brother and hence there is every doubt that he has also connived with the elder brother of the Petitioner. That, the Petitioner has recently been married and at the time of his arrest, it was only eight days since his marriage. Besides, he has no criminal



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antecedents and being the only bread winner of his family, his incarceration would adversely affect his family. That, should the Petitioner be enlarged on bail, he will not abscond nor tamper with the Prosecution Witnesses and he will appear before the Court on each and every date fixed for hearing. That, he is also willing to abide by any terms and conditions imposed by this Court.

3. Repelling the arguments of Learned Counsel for the Petitioner, Learned Additional Public Prosecutor submits that the Petitioner has been taking advantage of his License to run a Medical Store and has been obtaining medicines which are not permitted by the Licence. That, the Petitioner is not only a consumer of the controlled substances but investigation has led to the revelation that he is also a supplier and seller of such controlled substances. That, the Petitioner was caught in the act of concealing the controlled substances when the Police reached his residence for search and seizure, hence there is no doubt that the search and seizure was made from his residence, as against the submissions put forth by Learned Counsel for the Petitioner. Besides, the articles seized were in commercial quantity and hence the Petition for bail deserves to be rejected.

4. I have heard Learned Counsel for the parties at length and have duly perused all the documents furnished before the Court.

5. In view of the facts and circumstances placed before me today and in consideration of the fact that at this juncture it has been pointed out that the Petitioner was caught in the act of



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concealing the controlled substances in one room of his residence, where the Police reached and also considering that the quantity seized is a commercial quantity viz. 64 packets of Spasmodon capsules (total 6400 capsules); another 13 packets of Spasmodon capsules (total 1300 capsules) and 26 packets of Nitrosun-10 tablets (total 2600 tablets), the Petition for bail deserves to be and is accordingly rejected and disposed of.

6. I hasten to add that the observations made hereinabove will have no consequences on the merits of the matter which shall be considered at the time of trial. The Learned Trial Court shall consider the evidence placed by the Prosecution at the time of trial and reach an independent finding unhindered by the observations made by this Court in this Order.

7. Copy of this Order be forwarded to the Learned Trial Court, for information.

Acting Chief Justice
02.09.2021