

Bail Application No. 12 of 2020
Ganesh Sharma @ Gelal vs. State of Sikkim

THE HIGH COURT OF SIKKIM: GANGTOK
(Criminal Jurisdiction)

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

Bail Application No.12 of 2020

Ganesh Sharma @ Gelal
S/o Shri Shiva Lall Sharma,
Near Hotel Lemon Tree,
Lower Sichey, P.O. & P.S. Gangtok,
East Sikkim.

*Presently lodged at State Jail,
Rongyek, East Sikkim*

..... Applicant

Versus

State of Sikkim

.....Respondent

**Application for Bail under Section 439 read with Section
482 of the Code of Criminal Procedure, 1973.**

Appearance:

Mr. Rahul Rathi, Advocate for the Applicant.

Mr. Yadev Sharma, Additional Public Prosecutor for
the State of Sikkim.

Date of hearing : 25.01.2021

J U D G M E N T (O R A L)

Bhaskar Raj Pradhan, J.

1. The applicant has preferred the present application under Section 439 read with Section 482 of the Code of Criminal Procedure, 1973 (Cr.P.C.) seeking bail in Rangpo P.S. Case FIR No. 19/2020 dated 09.06.2020 registered

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under Sections 7(a)(b)/9/14 of the Sikkim Anti Drugs Act, 2006 (SADA, 2006) read with Section 34 of the Indian Penal Code, 1860 (IPC).

2. The facts as narrated by the applicant is that he was arrested on 09.06.2020 in connection with the aforesaid FIR. He was forwarded to State Jail at Rongyek on the same day itself by the learned Judicial Magistrate, Gangtok. The investigation is over and charge sheet has been filed. It is registered as S.T. (SADA, 2006) Case No. 22 of 2020 and the next date is fixed on 16.03.2021 for examination of prosecution witnesses.

3. It is also stated that the applicant had moved an application for bail before the learned Special Judge, SADA, 2006 which was rejected on 01.09.2020 on the ground that the concerned witnesses had clearly stated in their statements recorded by the police pursuant to the examination under Section 161 Cr.P.C. that the applicant was frequently calling on the mobile phone of accused person-Sandeep Chettri and verifying about the consignment of drugs.

4. The bail application was rejected on the ground that the offences were of serious nature and there was

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possibility of the applicant abusing his freedom in the event of being enlarged on bail.

5. The State of Sikkim has filed a reply dated 10.12.2020 to the application for bail. The release of the applicant on bail has been objected to by the State respondent not only on the merit of the case but also that there was possibility of the applicant abusing his liberty and tampering with witnesses.

6. On 14.12.2020 this court directed the learned Additional Public Prosecutor to file the entire charge sheet along with all the materials within a period of one week and listed the matter for hearing today. The charge sheet had been filed by the State of Sikkim on 26.12.2020 along with the documents filed therewith. The orders passed by the learned Special Judge from time to time have also been filed. On perusal it is clear that the learned Special Judge has on 14.10.2020 heard the parties and having considered the materials, framed charged against the accused persons including the applicant herein under Rule 17(1) of the Sikkim Anti Drugs Rules, 2007 and Section 9(1)(c) of SADA, 2006 read with Section 34 IPC and Section 9(4) of SADA, 2006 read with Section 34 IPC.

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7. Heard Mr. Rahul Rathi, learned counsel for the applicant and Mr. Yadev Sharma, learned Additional Public Prosecutor for the State of Sikkim.

8. Mr. Rahul Rathi contends that the materials before the learned Special Judge against the applicant are limited to the statements of the two seizure witnesses recorded under Section 161 Cr.P.C. and on perusal thereof it would be clear that the applicant is entitled to bail.

9. The applicant also contends that the learned Special Judge has failed to appreciate the facts and circumstances of the case as well as the law in its correct prospective. It is contested that since the investigation of the case is completed he is entitled to be enlarged on bail. It is stated that the applicant has been falsely implicated and Section 18 of SADA, 2006 had not been appreciated correctly by the learned Special Judge.

10. Section 18 of the SADA, 2006 provides that the offences under it are both cognizable and non-bailable. Section 18 starts with a non obstante clause *“Notwithstanding anything contained in the Code of Criminal Procedure, 1973”*. It reads as under:

“18. Offences to be cognizable and non-bailable:

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(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 -

(a) every offence punishable under this Act shall be cognizable;

(b) no person accused of an offence punishable under this Act shall be released on bail or on his own bond unless -

(i) the Public Prosecutor has been heard and also 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 or any other law for the time being in force on granting of bail.”

11. Section 18 (b) of SADA, 2006 provides for the twin conditions necessary for grant of bail in a case arising in SADA, 2006, notwithstanding anything contained in Cr.P.C. This provision is in *pari-materia* to Section 37 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act, 1985).

12. The Supreme Court in ***Narcotics Control Bureau vs. Kishan Lal & Ors.***¹ had occasion to examine the provision of Section 439 Cr.P.C. and Section 37 of the NDPS Act, 1985. The Supreme Court was pleased to hold that the powers of the High Court to grant bail under Section 439 are subject

¹ (1991) 1 SCC 705

to the limitations contained in the amended Section 37 of the NDPS Act and the restrictions placed on the powers of the court under the said section are applicable to the High Court also in the matter of granting bail.

13. In *Intelligence Officer, Narcotics C. Bureau v. Sambhu Sonkar & Anr.*² the Supreme Court held that it would be difficult to accept the contention of the learned counsel for the respondents therein that the liberal interpretation given by the High Court to Section 37 was justified as it affects personal liberty of a citizen who is yet to be tried is not acceptable. It was held by the Supreme Court that considering the legislative intent of curbing the practice of giving bail on technical ground in a crime which adversely affects the entire society including the lives of a number of persons and the object of making stringent provisions for control of illicit traffic in narcotic drugs and psychotropic substances, there is no reason to accept the construction of the section which its language can hardly bear.

14. In *Narcotics Control Bureau vs. Dilip Pralhad Namade*³ the Supreme Court while examining the provision of Section 37 of the NDPS Act, 1985 held as under:-

² (2001) 2 SCC 562

³ (2004) 3 SCC 619

“9. As observed by this Court in *Union of India v. Thamisharasi* [(1995) 4 SCC 190 : 1995 SCC (Cri) 665 : JT (1995) 4 SC 253] clause (b) of sub-section (1) of Section 37 imposes limitations on granting of bail in addition to those provided under the Code. The two limitations are: (1) an opportunity to the Public Prosecutor to oppose the bail application, and (2) satisfaction of the court that 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.

10. The limitations on granting of bail come in only when the question of granting bail arises on merits. Apart from the grant of opportunity to the Public Prosecutor, the other twin conditions which really have relevance so far as the present respondent-accused is concerned, are: (1) the satisfaction of the court that there are reasonable grounds for believing that the accused is not guilty of the alleged offence, and (2) that he is not likely to commit any offence while on bail. The conditions are cumulative and not alternative. The satisfaction contemplated regarding the accused being not guilty has to be based on reasonable grounds. 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 and he is not likely to commit any offence while on bail. This nature of embargo seems to have been envisaged keeping in view the deleterious nature of the offence, necessities of public interest and the normal tendencies of the persons involved in such network to pursue their activities with greater vigour and make hay when at large. In the case at hand the High Court seems to have completely overlooked the underlying object of Section 37 and transgressed the limitations statutorily imposed in allowing bail. It did not take note of the confessional statement recorded under Section 67 of the Act.”

15. In *Collector of Customs, New Delhi vs. Ahmadaliev*

Nodira⁴ the Supreme Court held as under:

“ 7. The limitations on granting of bail come in only when the question of granting bail arises on merits. Apart from the grant of opportunity to the Public Prosecutor, the

⁴ 2004 SCC (Cri) 834

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other twin conditions which really have relevance so far as the present accused-respondent is concerned, are: the satisfaction of the court that there are reasonable grounds for believing that the accused is not guilty of the alleged offence and that he is not likely to commit any offence while on bail. The conditions are cumulative and not alternative. The satisfaction contemplated regarding the accused being not guilty has to be based on reasonable grounds. 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."

16. The records reveal that the learned Special Judge having found *prima facie* materials against the applicant framed charges under the SADA, 2006 and the IPC. The order framing charge is not under challenge. The materials placed before this court are materials filed along with the charge sheet. It reveals, *prima facie*, that Sandeep Chettri (accused no.1) was apprehended on 09.06.2020 while driving a truck at the Rangpo boarder check post and during his search and seizure various controlled substances were recovered. The controlled substances were accordingly seized. It is the case of the prosecution that during this time the applicant constantly called Sandeep Chettri (accused no.1) from his phone no (8918189280) informing him that he was coming to receive the consignment of controlled substances in his vehicle.

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According to the prosecution he was thereafter, apprehended at IBM, Rangpo after a team was dispatched. Besides the statements of the two seizure witnesses as pointed out by Mr. Rahul Rathi the statement of the complainant also implicates the applicant for the commission of the alleged offence. The words “*reasonable grounds*” under Section 18 of the SADA, 2006 would have same meaning as has been explained by the Supreme Court vis-à-vis Section 37 of the NDPS Act, 1985. 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 in themselves to justify recording of satisfaction that the accused is not guilty of the offence charged.

17. This court has examined the materials which were placed before the learned Special Judge along with the charge sheet and the probable evidence which are required to be tested during trial. None of the materials placed would point to the existence of any facts or circumstances sufficient in themselves to justify the satisfaction that the applicant is not guilty of the offence charged. Contravention of Section 9(1)(c) and Section 9(4) of SADA, 2006 entails

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punishment of rigorous imprisonment which shall not be less than 10 years but may extend to 14 years. Therefore, in due consideration of the provisions of Section 439 and Section 18 of the SADA 2006, the materials against the applicant and the offences alleged to have been committed by the applicant this court is of the considered view that bail sought for by the applicant cannot be granted. The application is accordingly rejected.

(Bhaskar Raj Pradhan)
Judge

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

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