

Party Name : Sujit Chakraborty For And On Behalf Of Dibakar Debnath And Another Vs
State Of Tripura

THE HONBLE MR. JUSTICE S.C.DAS

Heard learned counsel, Mr. A. Banerjee for the petitioners and learned Public Prosecutor, Mr. A. Ghosh for the State-respondent. This is a petition filed under Section 439 of Cr.P.C. praying for bail of accused Sri Dibakar Debnath and Sri Sankar Sarkar, in connection with Kadamtala P.S. Case No.78 of 2013, registered under Section 22(a) and 22(b) of the NDPS Act,1985. The allegation is that S.I. Parikshit Debbarma of Kadamtala P.S., on 22.08.2013 at about 09-30 hours, received a secret information that one vehicle No.TR01-AF-0635 (Tata Indigo ECS) was carrying some contravened goods and on receipt of the information, he immediately rushed to Kadamtala-Tarakpur road and detained the vehicle and on search of the vehicle he recovered 1450 nos. of bottles of Corex cough syrup which were kept in the dicky of the said vehicle in plastic packets and paper carton. The accused persons were in the vehicle and they could not produce any document in support of carrying those cough syrups which contains narcotic drugs. He thereafter seized the cough syrups and also seized the vehicle and arrested the accused persons. Bail petition of the accused persons has been rejected by the learned Special Judge, Dharmanagar and hence, the present petition is filed. It is submitted by Mr. Banerjee, learned counsel for the petitioners that the FIR does not disclose compliance of Section 42 of the NDPS Act that on receipt of that information, the informant police officer dispatched or gave any information to his superior authority before the actual seizure. In respect of his contention, he referred the decision of the Apex Court in the case of Sukdev Singh V. State of Haryana reported in 2013 CRI.L.J. 841. It is also submitted by Mr. Banerjee that the order passed by the learned Special Judge, Dharmanagar, dated 10.09.2013, shows that investigation is almost complete and the case is awaiting for receipt of the report from the State Forensic Science Laboratory in respect of the seized cough syrup. He has, therefore, prayed for bail of the accused petitioners. Learned P.P., Mr. Ghosh has fairly submitted that the informant police officer on receipt of the information about carrying of the narcotic drugs immediately rushed to the road to intercept the vehicle and to recover the drugs. There was no time for the I.O. to give information to the superior authority before proceeding to the road. The entry made in the Case diary shows that immediately after the alleged recovery, information was sent to the superior authority of the police officer on the same date. It is, therefore, submitted by Mr. Ghosh that there was sufficient compliance of Section 42 of the NDPS Act. The Supreme Court in paragraph 18 of the judgment in the case of Sukdev Singh (supra) has observed that compliance of Section 42 is mandatory and at the same time it has been observed that --"But there could be cases where the Investigating Officer instantaneously, for special reasons to be explained in writing, is not able to reduce the information into writing and send the said information to his superior officers, but could do it later and preferably prior to recovery. Compliance of Section 42 is mandatory and there cannot be an escape from its strict compliance". Since in the Case diary it is found that the information was sent to the superior authority, I do not like to attach much of importance on this point at the time of consideration of bail itself. Learned P.P. has fairly submitted that investigation is almost complete and it is waiting for the report of State Forensic Science Laboratory. Under such circumstances while the investigation is almost in concluding stage, I grant the bail of the accused petitioners on strict conditions. It is, therefore, ordered that the accused perititoners namely Sri Dibakar Debnath and Sri Sankar Sarkar be released on bail on their furnishing a bail bond of `1,00,000/- (rupees one lakh) with two sureties each of like amount, on condition that they should keep themselves available before I.O. as and when required and that they should not interfere with the investigation or influence the witnesses and that they should not leave the jurisdiction of learned Special Judge, Dharmanagar, North Tripura, without his previous permission. The condition of bail may be relaxed to the satisfaction of learned Special Judge, Dharmanagar. Bail application accordingly stands disposed of. Case diary is returned to learned Public Prosecutor. Send a copy of this order to the Court of learned Special Judge, Dharmanagar. A copy of the order be given to the learned Public Prosecutor.