



THE HIGH COURT OF SIKKIM : GANGTOK

(Criminal Jurisdiction)

DATED : 15.11.2018

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

Bail Appln. No. 03 of 2018

Applicant : Nabin Manger,
S/o Mr. Krishna Manger,
R/o Mazitar,
P.O. Mazitar & P.S. Rangpo,
East Sikkim.
[Presently in Central Prison,
Rongyek, East Sikkim]

versus

Respondent : State of Sikkim.

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

Appearance:

Mr. William Tamang, Ms. Sushmita Dong and Mr. Girmey Bhutia,
Advocates for the Applicant.

Mr. J.B. Pradhan, Public Prosecutor with Mr. Karma Thinlay and Mr.
Thinlay Dorjee Bhutia, Additional Public Prosecutors and Mr. S.K.
Chettri and Ms. Pollin Rai, Assistant Public Prosecutors.

ORDER

Meenakshi Madan Rai, J.

1. The Applicant was arrested in connection with Rangpo Police Station Case No. 45 of 2018 dated 05.09.2018 under Sections 7(a)(b)/9/14 of the Sikkim Anti Drugs Act, 2006 ('SADA, 2006' for short) read with Sections 9(1)(c)/4 of the Sikkim Anti Drugs (Amendment) Act, 2017.



2. The FIR lodged by S.I. Pradeep Chettri informed that on 05.09.2018, he received a WT signal from Constable Chewang Dorjee Bhutia deployed at Rangpo Check Post to the effect that while checking incoming vehicles at Rangpo Check Post, he intercepted a truck bearing Registration No. SK-01-D-2311 with a load of cement. The vehicle was driven by one Birta Tamang of West Bengal and the Applicant was the sole occupant therein. They were suspected to be in possession of controlled substances. Accordingly, a Rangpo Police Station Case was registered on the same date under the above Sections of law and consequent to his arrest, the Applicant was produced before the learned Judicial Magistrate, East District at Gangtok, East Sikkim who remanded the Applicant to judicial custody. On 13.09.2018, the Applicant filed an application for bail before the Court of the learned Special Judge, SADA, 2006, East District at Gangtok, East Sikkim which was rejected. A second bail application was filed on 06.10.2018 which was also rejected vide order of the said learned Special Judge, SADA, 2006 on 08.10.2018. Hence, the Applicant is languishing in judicial custody for 54 days till the date of filing the instant application having been arrested on 05.09.2018.

3. According to learned Counsel for the Applicant, the controlled substances were not recovered from the person of the Applicant but was found to have been concealed in the



second seat of the truck which was accessible only to the driver of the vehicle. That, in fact, the Applicant had no knowledge whatsoever of concealment and carriage of the controlled substances. That the Applicant is aged about 35 years, a resident of Rangpo, Sikkim with no criminal antecedents and is the only bread winner of his family comprising of his parents, wife and two minor children. That, in such circumstances, there is no question of the Applicant tampering with evidence or absconding and since he is neither charged with offences punishable with death or life imprisonment, it is prayed that he be enlarged on bail.

4. Objecting to the application, learned Additional Public Prosecutor, Mr. Karma Thinlay contended that during the course of investigation, the statements of the Applicant and the driver of the truck were recorded and both have admitted that they were consumers of the controlled substances as well as selling the controlled substances at exorbitant rates in Sikkim. That, in fact, the controlled substances in the truck were also concealed by both of them after having made a discussion to purchase the articles on 04.09.2018. That the statements of both the accused persons corroborate each other and in view of the menace that is created by the sale of controlled substances in the State, releasing the Applicant on bail, at this stage, would not only be conceived to be an encouragement of the act but likelihood of the Applicant



absconding. Hence, it is prayed the application for bail be rejected.

5. The arguments of learned Counsel for both parties have been heard at length and given careful consideration.

6. Section 7(a) and (b) of the SADA, 2006 reads as follows;

"7. No person shall -

(a) sale (sic), stock for sale or trade in any controlled substances; or

(b) transport either inter-State or intra-State any controlled substance,

Without a valid license under the Drugs and Cosmetics Act, 1940 or Sikkim Trade License Act. ..."

7. Section 9 of the SADA, 2006 reads as follows;

"9. Whoever, contravenes any provision of this Act or any rule or any order made thereunder shall be punishable -

(a) where the contravention is by the licensed dealers, with suspension or cancellation of the license, or with imprisonment for a term which may extend to six months, or with fine which may extend to twenty thousand rupees, or with all;

(b) where the contravention involves use or consumption of the controlled substances, without valid medical prescription, by any means/route of intake, in any chemical form, such person shall undergo with compulsory detoxification, and to be followed by rehabilitation and also will remain under observation/probation, and such person shall also be liable to pay a fine which may extend to ten thousand rupees, if the user is young, unmarried or unemployed;

(c) where the contravention involves a person who is a State Government employee, or an employee in an Organisation or Undertaking under the State Government, such person shall be liable to imprisonment which may extend to six months, and also liable to pay a fine which may extend to



twenty thousand rupees. Further, such person shall also be liable to dismissal from service;

(d) where the contravention involves a person using a mode of transport or any other form of conveyance, either inter-State or intra-State, such person shall be liable to imprisonment for a term which may extend to five years or with fine which may extend to one lakh rupees, or with both, and the vehicle as used, shall be liable to be seized and confiscated, which may be released on payment of twenty thousand rupees;

(e) where the contravention involves the manufacturer of controlled substances, such person shall be liable to imprisonment which may extend to three years or with fine which may extend to fifty thousand rupees, or with both;

(f) where a person who has been convicted for an offence under this Act and if such person is unemployed, such conviction shall be a disqualification for employment under the State Government."

8. Section 9(1)(c) and Section 4 of the Sikkim Anti Drugs (Amendment) Act, 2017 reads;

"9. (1) Whoever, in contravention of any provision of this Act or any rule or order made thereunder, manufactures, possesses, sells, purchases, transports, imports inter-State, exports inter-State or uses,-

(a).....

(b).....

(c) where the contravention involves commercial quantity, with rigorous imprisonment which shall not be less than ten years but may extend to fourteen years and shall also be liable to pay fine which shall not be less than one lakh rupees but may extend to two lakh rupees."

"4. (1) Without prejudice to the provisions of sub-section (3) of Section 3, the Government shall appoint an officer not below the rank of Deputy Secretary or equivalent as the Programme Director and may also appoint such other officers with such designation as it thinks fit for the purposes of this Act.

(2) The Programme Director shall, either by himself or through officers subordinate to him,



exercise all powers or perform all functions entrusted to him by the Government."

9. While considering an application for bail, it becomes imperative on the Court to consider the seriousness of the offence apart from the interests of the society at large. It is no secret that the law enforcement agencies in Sikkim are battling with the sale of controlled substances which are brought into the State and sold by unscrupulous people to the young and impressionable. The consumers of controlled substances, it is now widely accepted, are in fact victims but it is essential that the Courts deal with an iron hand with the sellers who encourage addiction and dependence by the consumers on the controlled substances. In the matter at hand, the controlled substances were allegedly recovered from the truck which was being driven by one Birta Tamang said to be the co-accused and the Applicant who was the lone occupant therein. In view of the facts and circumstances placed before me, I am of the considered opinion that the interest of the society ought to be treated with priority in the instant matter considering the gravity of the offence in the context of this State. There is no guarantee that there will not be a repetition of the offence should the Applicant be enlarged on bail. Hence, I am not inclined to consider the application.

10. Admittedly, the charge-sheet has been filed. In such circumstances, the learned Special Judge, SADA, 2006, East



District at Gangtok, East Sikkim shall expedite trial and complete it by the last week of February, 2019.

11. Bail Application stands rejected and disposed of accordingly.

12. A copy of this order be sent to the learned Special Judge, SADA, 2006, East District at Gangtok, East Sikkim, for information and compliance of the direction *supra*.

13. Certified copies be made available to the parties, as per Rules.

(Meenakshi Madan Rai)
Judge
15.11.2018

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

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