



HIGH COURT OF SIKKIM

Record of Proceedings

Bail Appln. No.09 of 2021

BIKASH RAI @ KALAY BIKASH

APPLICANT

VERSUS

STATE OF SIKKIM

RESPONDENT

Date: 10.05.2021

CORAM :

THE HON'BLE MRS. JUSTICE MEENAKSHI MADAN RAI, JUDGE

For Applicant

Mr. Tashi Wongdi Bhutia,
Advocate.
Mr. Shakil Karki, Advocate.

For Respondent

Mr. Sudesh Joshi, Public
Prosecutor.

O R D E R

1. The Applicant was arrested in connection with Ranipool Police Station Case No.19/2020 dated 30.08.2020 under Sections 7/9/14 of the Sikkim Anti Drugs Act, 2006 ("SADA, 2006") read with Section 9(1)(c) of the Sikkim Anti Drugs Amendment Act, 2017. He was arrested on 03.09.2020 and remanded to Judicial Custody on 09.09.2020. Two Bail Applications filed before the Learned Special Judge, SADA, 2006, East Sikkim at Gangtok, were rejected vide Orders dated 29.09.2020 and 01.03.2021 respectively. The Applicant is thirty-three years old. Learned Counsel for the Applicant submitted that the rejection of his Bail Petitions tantamounts to a pre-trial conviction of the Applicant who, in fact, has not committed any offence and was arrested merely on the basis of a statement made by a co-accused one Anmol Rai, whose name was later clarified to be Anmol Thapa. The controlled substances were seized from a Tata Sumo vehicle which does not belong to the Applicant but belongs to one Kiran Kumar Chettri. The keys of the vehicle were seized from one Gopal Rai *alias* Bablu, hence no evidence whatsoever links the crime to the Applicant, who is a permanent resident of Tambutar, Ranipool, East Sikkim and has a wife and daughter who are presently suffering on account of his incarceration. In the facts and circumstances reflected above, the Applicant

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deserves to be enlarged on bail. That, he is willing to abide by any terms and conditions imposed by this Court.

2. Repudiating the contentions of Learned Counsel for the Applicant, Learned Public Prosecutor contended that the controlled articles seized by the Police was in a commercial quantity amounting to 258 bottles of Rexdryl Cough Syrup of 100 ml each. The vehicle was in the constructive custody of the Applicant, the keys of the vehicle having been left by Gopal Rai with him. That, he frequently deals in the sale of controlled substances including Cough Syrup and should he be enlarged on bail, in all likelihood he will tamper with evidence and threaten the witness Anmol Thapa thereby causing prejudice to the Prosecution case. The Petitioner had, in fact, absconded after the First Information Report ("FIR") was lodged and could be arrested only on 03.09.2020. That, the RFSL Report has been filed before the Learned Trial Court and trial has commenced in the matter, hence the Petition for bail be rejected in view of the provisions of Section 18 of the SADA, 2006.

3. I have heard the rival contentions of Learned Counsel for the parties. I have also perused the records placed before me.

4. As submitted by the Learned Public Prosecutor, the quantity of controlled substances seized is indeed large and would obviously not be for the personal consumption of the Applicant. The vehicle in which the controlled articles were found, was in the custody of the Applicant as revealed by the records before this Court today. In light of the facts placed before me and considering that the sale of the controlled substances has proved detrimental to society inasmuch as children as young as eight years old are rampantly misusing such controlled substances due to the unconscionable sale by persons lacking social responsibility, in my considered opinion the petition for bail deserves no consideration. That apart, Section 18 of the SADA, 2006 which is in consonance with Section 37 of the NDPS Act, 1985 provides that where the Public Prosecutor opposes the application for bail, the Court is to be satisfied that the Petitioner is not guilty of such offence and he is not likely to commit any offence while on bail. In view of the provision of law and considering the facts and circumstances, the petition stands rejected.

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- 5.** 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 obviously 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.
- 6.** The Learned Trial Court shall complete the trial within six months from today.
- 7.** Copy of this Order be forwarded to the Learned Trial Court, for information and compliance.

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Judge
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