



THE HIGH COURT OF SIKKIM: GANGTOK
(Criminal Jurisdiction)

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

Bail Application No. 12 of 2021

Pratik Biswakarma,
S/o Nar Bahadur Biswakarma,
R/o Zoom Daragoan, West Sikkim,

***Presently at judicial custody
in Boomtar Jail.
Namchi, South Sikkim.***

..... **Applicant**

Versus

State of Sikkim

..... **Respondent**

**Application under Section 439 of the Code of Criminal
Procedure, 1973.**

Appearance:

Ms. Tashi Doma Bhutia, Advocate for the Applicant.

Mr. Sudesh Joshi, Public Prosecutor with Mr. Sujan
Sunwar, Assistant Public Prosecutor for the State-
respondent.

Date of hearing : 23.10.2021.

ORDER (ORAL)

Bhaskar Raj Pradhan, J.

1. Pratik Biswakarma has moved this application for bail under Section 439 of the Code of Criminal Procedure, 1973. He was arrested on 18.02.2021 in connection with the First Information Report (FIR) lodged on 18.02.2021 after the seizure



of controlled substances from the vehicle in which he and five others were travelling. According to the applicant he had applied for bail before the learned Special Judge on five occasions which have all been rejected on various grounds.

2. Ms. Tashi Doma Bhutia, learned counsel for the applicant submits that besides the FIR he has not been implicated by any of the materials or statements filed along with the charge-sheet. It is submitted that he has no past criminal record; he is a young man of 23 years and therefore, he should be granted bail.

3. The learned Public Prosecutor however, opposes the grant of bail on the ground that there is no material to reflect that he is not guilty of the offence.

4. The prosecution against the applicant is under section 9(1) (c) and 9(4) of Sikkim Anti Drugs Act, 2006 (SADA) read with section 34 of the Indian Penal Code, 1860 (IPC).

5. Section 18 of the SADA provides:

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

(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.”

6. The learned Public Prosecutor opposes the bail application and has also filed a reply in opposition dated 08.10.2021. Under section 18(1) of the SADA where the learned Public Prosecutor opposes the application for bail the person accused of an offence punishable under the act cannot be released on bail until 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.

7. This court has examined the records of the case and it is of the firm view that there are no reasonable grounds for believing that the applicant is not guilty of such offence and that he is not likely to commit any offence while on bail.

8. The application for bail is accordingly rejected.

(Bhaskar Raj Pradhan)
Judge

Approved for reporting: **Yes/No**
Internet : **Yes/No**

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