

THE HIGH COURT OF SIKKIM : GANGTOK

(Criminal Jurisdiction)

DATED : 27th NOVEMBER, 2020

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

Bail Appln. No.11 of 2020

Petitioner : Sita Rai @ Sita Darjee

versus

Respondent : State of Sikkim

Petition under Section 439 read with Section
482 of the Code of Criminal Procedure, 1973

Appearance

Mr. K. T. Tamang, Advocate for the Appellant.

Ms. Pema Tamang, Assistant Public Prosecutor with SI Sonam
Thendup Bhutia for the State-Respondent.

O R D E R (ORAL)

Meenakshi Madan Rai, J.

1. The Petitioner, aged about 29 years, was arrested by the Singtam Police Station, in connection with FIR No.50/2020, dated 15-10-2020, at around 02.35 a.m., under Section 7(a)(b) and 14 of the Sikkim Anti Drugs Act, 2006 (for short, "SADA, 2006") read with Section 9(1)(b) of the Sikkim Anti Drugs (Amendment) Act, 2017, Sections 22/27 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, "NDPS Act") and Section 34 of the Indian Penal Code, 1860, from Dhamala Colony, Singtam, East Sikkim. The controlled substances allegedly seized at around 01.40 a.m. from the rented premises of the Petitioner which she shares with her husband and twelve year old son, comprised of 614 files of *Spasmo-Proxyvon Plus* capsules.

2. Learned Counsel advancing his arguments for the Petitioner drew the attention of this Court to the FIR lodged and submitted that although the name of the Petitioner finds place in the FIR there is in fact no specific allegation against her. She is neither alleged to be a consumer of controlled substances nor is she said to be a peddler of controlled substances. That, Kiran Darjee, whose name appears in the FIR is her husband, a truck driver who is accused of being a seller of controlled substances. For her part she is unaware of the activities of her husband pertaining to sale of controlled substances neither was she aware that controlled substances recovered from beneath her bed had been kept there as the articles were concealed with a cloth. That, she is a house wife and a mother of a twelve year old child and is not involved in any offence either under the SADA or the NDPS Act, besides which she has no criminal antecedents. It was also urged by Learned Counsel that there was no compliance of Section 21 of the SADA, 2006, when the search and seizure was carried out by the Investigating Officer (I.O.) apart from which the seizure memo reveals that although the seizures were made on 15-10-2020 the I.O. they were forwarded to the RFSL for forensic examination only on 22-10-2020, raising doubts about the authenticity of the seizure of the controlled substances. That, in consideration of the facts and circumstances canvassed the Petitioner deserves to be released on bail.

3. *Per contra*, Learned Assistant Public Prosecutor while objecting to the Petition contended that the controlled substances seized were in commercial quantity and recovered from beneath the bed of the Petitioner. That, it is an appalling contention that

she could be unaware of the articles which were placed below her bed when she shares the rented premises with her husband. That, she is complicit with her husband in selling the controlled substances to the youth in Singtam town and, therefore, deserves no consideration at this stage.

4. I have heard the rival contentions advanced before me. The FIR, the Seizure Memo and the Arrest Memo have also been duly perused by me.

5. Admittedly, as could be culled out from the submissions of Learned Assistant Public Prosecutor, the Charge-Sheet is yet to be filed as the RFSL report has not yet been received by the I.O. However, the FIR does not reveal the role of the Petitioner save to the extent that the I.O. sought legal action against her. Kiran Darjee who is accused of being a peddler of controlled substances is her husband and she lives with him in the rented premises, that by itself does not *prima facie* establish her complicity in the offence in the absence of a specific role attributed to her in the FIR. At this stage, I am not inclined to consider the submissions of Learned Counsel for the Petitioner pertaining to the lack of compliance of procedure for seizure or authenticity of the seizures made, these are to be left for consideration at the time of the trial.

6. Accordingly, in the light of the rival submissions, the facts and circumstances placed before me and the resultant discussions *supra*, I find that this is a fit case where the Petitioner can be enlarged on bail.

7. It is hereby ordered that the Petitioner be enlarged on bail on furnishing PB&SB of Rs.35,000/- (Rupees thirty-five thousand) only, each, subject to the conditions that;

- (i) She shall not leave Singtam Police Station without the specific written permission of the I.O. of the case;*
- (ii) She shall not threaten or induce any witnesses acquainted with the facts of the case; and*
- (iii) She shall appear before the Learned Trial Court as and when required.*

Flouting any of the above conditions, will lead to her bail bonds being cancelled.

8. The observations made for the purpose of this Bail Appln. shall in no manner be construed as opinions on the merits of the matter.

9. Bail Appln. stands disposed of.

10. Copy of this Order be sent to the Learned Special Judge (SADA, 2006), East Sikkim at Gangtok, for information.

(Meenakshi Madan Rai)
Judge
27-11-2020