

THE HIGH COURT OF SIKKIM : GANGTOK

(Criminal Jurisdiction)

DATED : 27th MAY, 2020

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

Bail Appln. No.04 of 2020

Petitioner/Accused : Raj Kumar Gupta

versus

Respondent : State of Sikkim

Bail Appln. No.05 of 2020

Petitioner/Accused : Achhay Lal Gupta

versus

Respondent : State of Sikkim

Bail Appln. No.06 of 2020

Petitioner/Accused : Lila Bahadur Chettri

versus

Respondent : State of Sikkim

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

Appearance

Mr. Tarun Choudhury, Advocate for the Petitioners/Accused Persons.

Mr. Yadev Sharma, Additional Public Prosecutor and Mr. Sujan Sunwar, Assistant Public Prosecutor for the State-Respondent.

O R D E R

Meenakshi Madan Rai, J.

1. These three Bail Petitions are being disposed of by
a common Order, emanating as they do from a common FIR.

2. The FIR, Annexure 1, registered as Melli P.S. Case No.11/2020, dated 24-04-2020, under Section 7/9/14 of the Sikkim Anti Drugs Act, 2006 (for short, "SADA, 2006") read with Section 7(1)(b)/7(4) [*sic*] of the Sikkim Anti Drugs (Amendment) Act, 2017, was lodged by Sub-Inspector Melli Police Station before the Station House Officer, Melli P.S. on 24-04-2020, upon information from Assistant Sub-Inspector Durga Prasad Gurung deployed at Melli Check Post, that on routine checking of incoming and outgoing vehicles at Melli Check Post, a truck bearing registration No.SK 04 D 0794 was intercepted at the check post. The vehicle was carrying poultry feed for which the driver furnished the relevant bill. Further checking of the vehicle led to the discovery of some boxes of medicines for two medical Stores at Melli Bazaar, namely, M/s. Jawahar Lal Gupta Medical Store and M/s. Achhay Lal Gupta Medical Store. On opening one of the boxes, controlled substances being Cough Syrup was suspected to be in the said boxes. Thereafter, a search of the vehicle was conducted by the SI in the presence of two independent witnesses and the Sub-Divisional Police Officer (SDPO), Jorethang in terms of the provisions of Section 22 of the SADA, 2006. 36 (thirty-six) bottles of Rexdryl Cough Syrup each containing 100 ml. were recovered from the truck on such search pursuant to which the FIR came to be lodged.

3. Learned Counsel for the Petitioner advancing his submissions for the Petitioner Raj Kumar Gupta, in Bail Appln. No.04 of 2020, contended that although the truck was

authorised only to carry poultry feed, yet the Petitioner who runs a duly licensed medical store at Melli had requested the truck owner to instruct the driver to bring some medicines which were urgently required in his shop. That, owing to the pandemic and the restricted movement of vehicles, the Petitioner was unable to procure the medicines which were required by the public at large or any other vehicle to ferry the goods. On the day of the search and seizure of the vehicle, i.e., 24-04-2020, 36 bottles of controlled Cough Syrup were found in the truck along with the other medicines in 24 cartons, requisitioned by the Petitioner and co-accused Achhay Lal Gupta, duly supplied by M/s. Sunrise Distributors, Siliguri. That, the driver had forgotten to carry the bills prepared by the said supplier when he had picked up the said medicines along with the controlled substances which were also included in the bill. That, Annexure 8 to the Petition is certified to be a true copy of the bill, dated 23-04-2020, furnished by M/s. Sunrise Distributors reflecting the name of the 14 other medicines, besides the Cough Syrup listed at serial no.15 therein with payment made. That, although the bill could not be furnished on 24-04-2020 the Petitioner sought time from the Police and furnished it on 25-04-2020, the very next day. That, this bill was duly verified by the I.O. from the Distributor and found to be genuine. That, the Licence, Annexure 5, issued to M/s. Jawahar Lal Gupta by the Health and Family Welfare Department, Drugs and Cosmetic Cell, Government of Sikkim, under the Drugs and Cosmetics Act, 1940, permitted sale of all

categories of drugs including Schedule "H" Drugs of the Drugs and Cosmetics Rules, 1945, except the drugs listed at Schedule C and C(1) of the said Rules and covered the requirements of Section 7 of the SADA, 2006. Consequently, on the bill having been furnished, it is evident that the Petitioner had committed no offence as booked and deserves to be enlarged on bail. That, the Petitioner is a permanent resident of Melli Bazaar, conducting his ancestral business therein besides being a respectable citizen with no criminal antecedents. Hence, the question of him absconding does not arise. That, the Petitioner undertakes to abide by any condition imposed by this Court should he be enlarged on bail.

4. In the case of Achhay Lal Gupta, Petitioner in Bail Appln. No.05 of 2020, it was submitted by Learned Counsel that he is the owner of a medical shop by the name M/s.Achhay Lal Gupta Medical Store at Melli Bazaar, licensed vide Annexure 5 to sell all drugs including Schedule "H" drugs under the Drugs and Cosmetics Rules, 1945, excluding Schedule C and C(1) of the said Rules. That, the Licence, Annexure 5, was issued to the Petitioner by the Health and Family Welfare Department, Drugs and Cosmetic Cell, Government of Sikkim. The Petitioner was arrested by the Police only for the reason that the driver, Lila Bahadur Chettri, of the truck (Petitioner in Bail Appln. No.06 of 2020), had stated that the medicines belonged to Raj Kumar Gupta and Achhay Lal Gupta. However, the medicines ordered by the instant Petitioner Achhay Lal Gupta and transported in the truck, had the requisite bill indicating the

purchase of all the medicines for his Medical Store and there were infact no controlled substances in his consignment. 36 bottles of Cough Syrup belonged to Raj Kumar Gupta as duly admitted by him to the Police for which the bill was also furnished the next day by Raj Kumar Gupta. The Police on due verification released the medicines pertaining to the requisition of M/s. Achhay Lal Gupta Medical Store, however despite release of the medicines on due verification of the bill, the Petitioner Achhay Lal Gupta was taken into custody, sans connection between the Petitioner and the controlled substances carried in the truck. The Petitioner is also a permanent resident of Melli Bazaar, South Sikkim, running his business of medicines, has no criminal antecedents and therefore the question of his absconsion does not arise. That, he will abide by all conditions imposed by the Court should he be enlarged on bail.

5. So far as the Petitioner in Bail Appln. No.06 of 2020 Lila Bahadur Chettri is concerned it is admitted by Learned Counsel for the Petitioner that the truck which the Petitioner was driving was only authorised to carry poultry feed but out of magnanimity and in consideration of the ongoing pandemic and the directions of his owner and the Petitioner himself being of the belief that the medication was required for the general good agreed to carry the medication for the stores of both Raj Kumar Gupta and Achhay Lal Gupta. That, he had no *mens rea* whatsoever and was unaware of the contents of the cartons. In any event, 36 bottles of Rexdryl are duly accounted for and

were brought to be sold by licensed medical shops in Melli as established by the bills furnished by the other two Petitioners, in Bail Appln. Nos.04 and 05 of 2020, who had been summoned to the Police Station on him having informed the Police that the consignment of medicines belonged to the other two Petitioners. That, he is a permanent resident of Melli, South Sikkim and will not abscond nor does he have criminal antecedents and is willing to cooperate with investigation and all conditions imposed by this Court.

6. Learned Additional Public Prosecutor while opposing the Petitions filed by the three Petitioners admits that the medicines ordered by Achhay Lal Gupta were found to be duly billed and the medicines and the bill released to the said Petitioner. However, the involvement of the Petitioner in the instant matter is clear as the driver had mentioned his name and stated that he had been requested to carry the controlled substances by the said Petitioner Achhay Lal Gupta. That, so far as the Petitioner Raj Kumar Gupta is concerned although the bill pertaining to 36 bottles of Cough Syrup containing controlled substances was furnished it was only after the FIR was lodged and the recovery and seizures made, indicating *mens rea* on the part of the Petitioner, besides it cannot be ruled out that the document is a false one. That, on account of the pandemic, the Investigating Officer has not been able to verify by going in person to M/s. Sunrise Distributors, Siliguri as to whether Annexure 8, being the bill issued to M/s. Jawahar Lal Gupta Medical Store is a genuine bill or not. So far as the

driver, Lila Bahadur Chettri is concerned, the Petitioner was well aware that he was carrying the controlled substances besides being unauthorised to carry the said medicines the permission only having been granted to carry poultry feed. Hence, in view of the involvement of all the Petitioners in the matter under Section 7/9/14 of the Sikkim Anti Drugs Act, 2006 (for short, "SADA, 2006") and Section 7(1)(b)/7(4) of the Sikkim Anti Drugs (Amendment) Act, 2017, the Petitions for bail filed each of them be rejected.

7. The submissions of Learned Counsel for the parties were heard *in extenso* and given due consideration. I have carefully perused all documents on record.

8. The FIR, Annexure 1, indicates that the Petitioners were booked under Section 7/9/14 of the SADA, 2006 read with Section 7(1)(b)/7(4) of the Sikkim Anti Drugs (Amendment) Act, 2017. Pausing here momentarily, it is necessary to clarify that Section 7 of the SADA, 2006, reads as follows;

"CHAPTER III

PROHIBITION, CONTROL AND REGULATION

Prohibition of certain operations

7. No person shall –

(a) sale, stock for sale or trade in any controlled substance; 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:

Provided that, and subject to the other provisions of the Act and the rules made thereunder, the possession of verifiable quantities, as prescribed in the rules of controlled substances for medicinal purposes with a valid prescription, or for a legal use of the substance, shall be permissible:

Provided further that the amount of controlled substance in possession shall not be beyond the limit prescribed in prescription slip/card, or in cases of other substances other than drugs, the amount permissible shall be proportionate to its purported use.”

9. By the Sikkim Anti Drugs (Amendment) Act, 2017, in Chapter IV pertaining to Offences and Penalties, Section 9 which deals with punishment for contravention of controlled substances, of the SADA, 2006, came to be substituted by the following;

**“Substitution
of Section 9**

7. In the Principal Act, for Section 9, the following Section shall be substituted, namely:-

“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) where the contravention involves small quantity, with rigorous imprisonment for a term which shall not be less than two years but may extend to five years and shall also be liable to pay fine which shall not be less than twenty thousand rupees but may extend to fifty thousand rupees;

(b) where the contravention involves large quantity, with rigorous imprisonment for a term which shall not be less than seven years but may extend to ten years and shall also be liable to pay fine which shall not be less than fifty thousand rupees but may extend to one lakh rupees;

(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.

(2)

(3)

(4) 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

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imprisonment for a term which shall not be less than ten years but which may extend to fourteen years and shall also be liable to fine which shall not be less than one lakh but may extend to ten lakhs rupees and the conveyance as used, shall be liable to be seized and confiscated, which may be released on payment in the following manner:-

- (a) Heavy motor vehicle – Rupees two lakhs
- (b) Light motor vehicle – Rupees one lakh
- (c) Two-or-three wheeled – Rupees fifty thousand
- (d) Any other form of conveyance – Rupees twenty-five thousand

(5)”

During the substitution of Section 9 made vide the Act of 21 of 2017 with effect from 19-09-2017, it is seen that the number 7 appears a little above the substituted Section 9. In this regard, it appears that there is some confusion in the FIR pertaining to the provisions of the SADA, 2006 the Petitioners having been booked under Section 7/9/14 of the SADA, 2006 and Section 7(1)(b)/7(4) of the Sikkim Anti Drugs (Amendment) Act, 2017. The numerical 7 appearing a little above Section 9 does not denote a Section but is the serial number, inserted to indicate the substitution of Section 9 by the said amending Act. Infact, there is no Section 7(1)(b) or Section 7(4) for the reasons enumerated hereinabove and ought to be read as Section 9 and its Sub-Sections, the amending Act of 2017 having substituted Section 9 and not Section 7. The air having been cleared on this aspect, I proceed to examine the matter at hand.

10. The FIR, Annexure 1, is dated 24-04-2020. The FIR records *inter alia* as follows;

"9. Particulars of properties stolen/involved (Attach separate sheet):

- (a) 36 bottles of 100 ml REXDRYL cough syrup batch no.04320-5MB2.
- (b) Truck SK 04 D 0794 (Ecomet).
- (c) 160 bags of poultry feeds.
- (d) 24 Nos. of boxes containing medicines with respective bills."

The Prosecution case is that 36 bottles of Rexdryl Cough Syrup of 100 ml. each are controlled substances transported into Sikkim in violation of the provisions of the SADA, 2006. On perusal of the portion *supra* of the FIR, at this juncture, it cannot but be remarked that the FIR itself appears to contradict the Prosecution case since admittedly the 34 boxes containing medicines had their respective bills and thereby were accounted for. Infact, the FIR also reflects *inter alia* as follows;

".....

Subsequently, the involved vehicle was searched as per the provision laid down u/s 22 of SADA 2006 in order to avoid any further delay in action. The search of vehicle in presence of aforementioned witnesses and SDPO Jorethang who arrived at the PO consequent to the information relayed to him led to the recovery of 36 bottles of 100 ml REXDRYL cough syrup batch no.04320-5MB2 (sic) from the cabin of the aforementioned truck which was seized along with the truck b/r No SK 04D0794 (Ecomet), its document & key, 160 bags of poultry feed and **24 Nos. of boxes containing medicines with respective bills.**

....." [emphasise supplied]

11. It is the Prosecution case that the Petitioners Raj Kumar Gupta and Achhay Lal Gupta were summoned to the Check Post requiring them to furnish the valid bills for the

seized controlled substances. It is admitted that Achhay Lal Gupta furnished the required bills consequent upon which his consignment was released to him by the Police. Despite such steps having been taken by the Police on due verification of the required bill, the Petitioner Achhay Lal Gupta was taken into custody by the Police revealing a bizarre situation. The Petitioner Raj Kumar Gupta admittedly sought time and furnished the computer generated bill Annexure 8, dated 23-04-2020, which revealed the requisition of 36 bottles of Rexdryl from M/s. Sunrise Distributors, Siliguri, duly paid. Serial No.15 of the said bill indicates that 36 bottles of Rexdryl had also been ordered by him from the said Distributors. The FIR as already seen was lodged on 24-04-2020, the bill, Annexure 8, was generated on 23-04-2020 and furnished on 25-04-2020 to the Police.

12. The Licence, Annexure 5, respectively of both the Petitioners, Raj Kumar Gupta and Achhay Lal Gupta, have been perused duly by me, wherein it is indicated that both Petitioners have been authorised to sell all medicines except that in Schedule C and C(1) of the Drugs and Cosmetics Rules, 1945. A month has elapsed since the date of arrest and confinement of the Petitioners in judicial custody, yet it is the case of the Prosecution that the authenticity of the bill Annexure 8 is yet to be verified by the I.O. The Prosecution case is that due to the prevailing pandemic the I.O. has not been able to travel in person to make the verification from the Distributors. There is no clarity from the side of the Prosecution as to whether the

verification has ever been made telephonically by the I.O. and if the answer is in the negative, then why is it so? Learned Counsel for the Petitioners has contended that the bill was found to be genuine on such verification by the I.O. from the Distributors.

13. The Petitioner Lila Bahadur Chettri and the owner of the truck, I find are guilty of having flouted the provisions of the permission granted to them for carrying poultry feed only and no other materials. Suffice it however to state here that no steps have been envisaged in this regard by the concerned authorities so far as facts before this Court disclose and thus require no discussion. The said Petitioner is oblivious of the contents of the cartons and has followed the directions of his employer in transporting the goods in the cartons. At this juncture, no *mens rea* has been made out against him.

14. Consequently, on consideration of all facts and circumstances placed before this Court, I am of the considered opinion that the Petitioners can be enlarged on bail. It is accordingly ordered as follows;

- (i) The Petitioners, Raj Kumar Gupta in Bail Appln. No.04 of 2020, Achhay Lal Gupta in Bail Appln. No.05 of 2020 and Lila Bahadur Chettri in Bail Appln. No.06 of 2020, be enlarged on each of them furnishing PB&SB of Rs.50,000/- (Rupees fifty thousand) only, each.
- (ii) They shall report to the I.O. of the case as and when required until completion of investigation.

- (iii) They shall not make attempts to contact any witness pertaining to the instant matter.
- (iv) They shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him/them to disclose such facts to the Investigating Officer or to the Court.
- (v) They shall remain at Melli and may leave station only with the specific written permission of the I.O. of the Case.

15. The observations made herein are only for the purposes of the instant Bail Petitions and shall not be construed as findings on the merits of the matter, which shall be considered at the time of trial, if any.

16. The Bail Applications stand disposed of accordingly.

17. Copy of this Order be made available to all the Special Judges (Sikkim Anti Drugs Act, 2006) for information.

(Meenakshi Madan Rai)
Judge
27-05-2020

Approved for reporting : **Yes**