

THE HIGH COURT OF SIKKIM : GANGTOK
(Criminal Jurisdiction)

DATED: 06.06.2020

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

Bail Appln. No. 07 of 2020

Petitioner/Accused : Bikky Agarwal

versus

Respondent : State of Sikkim

Petition under Section 439 of the
Code of Criminal Procedure, 1973

Appearance:

Mr. Ajay Rathi, Mr. Rahul Rathi, Ms. Phurba Diki Sherpa and
Mr. Ladong R. Lepcha, Advocates, for the
Petitioner/Accused.

Ms. Mukun Dolma Tamang, Assistant Public Prosecutor for
the State.

O R D E R

Meenakshi Madan Rai, J.

1. The Petitioner herein, aged about 22 years, was arrested on 14.12.2019 at Rangpo Check Post, East Sikkim, in connection with FIR No.43-2019, dated 14.12.2019, at 02:50 Hrs, under Sections 7(a)(b)/9/14 of the Sikkim Anti Drugs Act, 2006 (for short, "SADA, 2006"). The controlled substances were allegedly seized at 00:45 Hrs.

2. Learned Counsel for the Petitioner advancing his arguments, submitted that investigation in the matter is

completed and Charge-Sheet has been filed before the concerned Court which however rejected the Petitioner's application for bail. The Petitioner and the Driver were the only occupants of the vehicle, the Petitioner having taken a lift in it from Siliguri. On reaching Rangpo Check Post the vehicle was stopped by the Police who conducted routine checking of the vehicle and recovered and seized controlled substances, allegedly being 30 (thirty) bottles of Rexdryl cough syrup from the boot of the vehicle. The vehicle was registered in the name of the Driver, Feroj Ansari who however, was not arrested in the instant matter and neither his role in the matter was delved into nor his vehicle seized. That, there is no proof whatsoever to establish that the controlled substances belonged to the Petitioner and no other personal belongings of the Petitioner such as clothes or Identity Cards were recovered from the vehicle to link the controlled substances and thereby the offence to the Petitioner. That, the Petitioner was arrested on the mere statement of the Driver of the vehicle sans proof whatsoever and has been falsely implicated in the case. That, the Petitioner is innocent, has no criminal antecedents and is the only earning member in his family consisting of aged parents who will be prejudiced by his incarceration. Hence, in the facts and circumstances, the Petitioner deserves to be enlarged on bail. He undertakes to abide by any stringent terms and conditions imposed, if so released. Learned Counsel placed reliance on the Orders of

this Court in Bail Appln. No.02 of 2020, Rupa Gurung vs. State of Sikkim dated 11.03.2020 and Bail Appln. No.03 of 2020, Dharmaan Rai vs. State of Sikkim dated 26.05.2020.

3. *Per contra*, learned Assistant Public Prosecutor emphatically objected to the petition for bail and while relying on the FIR submitted that the Petitioner who was seated in the back seat of the taxi vehicle was searched on the Sub Inspector of Police (Complainant) suspecting that he could be in possession of controlled substances. Such search of the Petitioner and his belongings kept in the boot of the vehicle fructified in the recovery of 30 (thirty) bottles of Rexdryl cough syrup, Hindi newspapers, one red coloured carry bag and a black polythene. These recoveries indicate that the suspicions of the Complainant were well-founded. Inviting the attention of this Court to the statement of the Driver Feroj Ansari under Section 161 of the Code of Criminal Procedure, 1973 (for short, "Cr.P.C.") learned Assistant Public Prosecutor contended that the Driver's statement clearly reveals that the Petitioner had kept his luggage in the boot of the vehicle and thereafter boarded the vehicle. The controlled substances were recovered from the boot and therefore unequivocally belonged to the Petitioner. The statement of the other seizure witness also lends credence to the statement of Feroj Ansari thereby establishing that the controlled substances had been brought by the Petitioner and belonged to him. Learned Assistant Public Prosecutor however conceded that no other

article belonging to the Petitioner was seized to establish that the controlled substances belonged to the Petitioner and none else. It was also conceded that the role of the taxi Driver was not investigated into.

4. I have heard the rival contentions of learned Counsel for the parties at length. I have also perused the documents placed before me being the FIR, Property Seizure Memo, Arrest Memo and the Final Report under Section 173 Cr.P.C.

5. The FIR was lodged by the Sub Inspector, Rangpo Police Station who conducted the search of the vehicle. As per the Property Seizure Memo, 30 (thirty) bottles of *Rexdryl* Cough Syrup were seized, the quantity of each bottle has not been mentioned. The Prosecution case hinges on the statement of the Driver of the vehicle who, being the only other occupant therein, implicated the Petitioner as being the owner of the controlled substances seized. The records placed before this Court reveal that the Driver was alone in his vehicle bearing Registration No.WB74AZ-3629 when he was returning to his home at Rangpo, on the West Bengal side. The vehicle was stopped by the Petitioner at 2nd Mile, Siliguri requesting for a lift. According to the Driver, the Petitioner kept his luggage in the boot of the vehicle and thereafter boarded the vehicle. When the search at Rangpo Check Post ensued, the controlled substances mentioned above were seized, however, it may relevantly be noted that although the

FIR reveals that recovery was made from the boot of the vehicle, no mention has been made of any article/bag which contained the bottles to link the ownership of the controlled substances to the Petitioner. It is also the admitted position of the Prosecution that no other articles belonging to the Petitioner were seized to indicate that the controlled substances belonged to the Petitioner. The search and seizure evidently took place on the evening of 13.12.2019 while the FIR was lodged on 14.12.2019. At this stage the Prosecution has not been able to establish *prima facie* by any other evidence save the statement of the Driver of the vehicle that the controlled substances belonged to the Petitioner and none else. Admittedly no efforts were made to rule out the complicity of the Driver in the matter. Hence, these are the circumstances that have been placed before this Court to establish that the Petitioner is guilty of the offence under Sections 7(a)(b)/9/14 of the SADA, 2006.

6. Section 18 of the SADA, 2006 reads as follows;

"18. (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**

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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."

(Emphasis supplied)

The provision of law *supra* is self-explanatory and requires no elucidation. Suffice it to state that the Prosecution *prima facie* must link the offence to the Petitioner rendering his complicity in the offence indubitably which however is lacking herein at this juncture. In the light of the materials placed before this Court, the provision of law *supra* and the discussions which have emanated, I am of the considered opinion that this is a fit case where the Petitioner can be enlarged on bail. In passing, it may relevantly be noticed that the FIR and the Property Seizure Memo records that 30 (thirty) bottles of Rexdryl Cough Syrup were seized while the investigation reveals that the Exhibits recovered and seized were "Altorex-CD" and "Reksodin cough syrup."

7. It is accordingly ordered that the Petitioner be enlarged on bail on furnishing PB&SB of Rs.50,000/- (Rupees fifty thousand) only, each, subject to the conditions that;

- (i) He shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to

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dissuade him/them to disclose such facts to the Investigating Officer or to the Court.

- (ii) He shall not leave Rangpo without the specific written permission of the Investigating Officer of the case.
- (iii) He shall appear before the Court on all dates of trial.

Should any of the above conditions be flouted his bail bonds shall stand cancelled.

8. The observations made herein shall in no manner be construed as findings 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
06.06.2020

Approved for reporting: **Yes**

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