

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 1383 OF 2017
(Arising out of S.L.P. (Crl.) No.1105 of 2017)

BINOD KUMAR @ BINOD KUMAR BHAGAT **...APPELLANT**

VERSUS

THE STATE OF BIHAR **...RESPONDENT**

ORDER

1. Leave granted.
2. The appellant, Binod Kumar @ Binod Kumar Bhagat son of late Krishna Kumar is facing trial for the offences punishable under Sections 272, 273/34 of the Indian Penal Code, Sections 27(b)(ii), 28, 36AC of Drugs & Cosmetics Act, 1940 and Section 22(C) of the Narcotic Drugs & Psychotropic Substances Act, 1985 (hereinafter referred to as NDPS Act, 1985). He has been in custody since 24.08.2016 in Araria P.S. Case No. 546 of 2016.
3. The prosecution has alleged that on 23.08.2016, a search was conducted at Azad Transport Company Pvt. Ltd., Sadakat Complex, Navratan Chowk, where 4000 bottles of Corex cough syrup containing codeine was recovered and on being asked, the

accused appellant, who is running the said transport agency placed a consignment note before the Drug Inspector but instead of the drugs shown in the consignment note, 40 cartons containing 100 bottles each of Corex cough syrup (100 ml) having codeine was recovered and the accused did not show any documents with regard to such recovered cough syrup. The prosecution further states that the drug was recovered from the godown being managed by the appellant.

4. Learned senior counsel appearing for the appellant submits that the drug which was recovered from the godown being managed by the appellant is Corex syrup containing codeine which is being manufactured for the past 25 years. The Government of India issued notification dated 10.03.2016 in exercise of power under Section 26A of the Drugs and Cosmetics Act, 1940 and sought to prohibit the manufacture, distribution and sale of 344 Fixed Dose Combination (FDC) Drugs which included Corex. It is argued that the manufacturer and distributors of prohibited Drugs filed writ petition before the High Court of Delhi and the High Court hold that the notification in question do not abide with the law and were quashed in writ petition (C) No. 2212 of 2016 on 01.12.2016. It is further argued that in view of this development Corex containing codeine is within the permissible limit and is not covered under the NDPS Act, 1985 and the Drugs and Cosmetics Act, 1946.

5. It is also argued that the appellant is only an employee (Manager) of Azad Transport Company Pvt. Ltd. The said company is engaged in the business of transportation of goods. The consignee was Alsafa Surgical, Araria. The appellant is assigned with the duty of godown management.

6. We have also heard learned counsel for the respondent State, who has opposed the grant of bail.

7. According to the prosecution the Corex cough syrup has been recovered from the godown and the prosecution alleges that it has been recovered from the appellant. It is evident that the Delhi High Court by order dated 01.12.2016 quashed the notification issued under Section 26A of the Drugs and Cosmetics Act, 1940 which has sought to prohibit the manufacture, distribution and sale of 344 Fixed Dose of Combination. The FIR was registered on 23.8.2016. Be that as it may, the appellant has been in custody from 24.08.2016.

8. Having regard to the facts and circumstances of the case, we are of the view that it is just and proper to release the appellant on bail. Therefore, we order the appellant to be released on bail on execution of his personal bond in sum of Rs. 25,000/- with two sureties in the like sum to the satisfaction of the trial judge. We permit the trial judge to impose such conditions as he feels necessary for ensuring the appellant's attendance on the dates of posting in the trial court.

9. The order of the High Court dated 15.12.2016 in Criminal Miscellaneous No. 44301 of 2016 is hereby set aside and the appeal is accordingly allowed.

.....J
(J. CHELAMESWAR)

.....J.
(S. ABDUL NAZEER)

New Delhi;
August 10, 2017.

ITEM NO.2

COURT NO.3

SECTION II-A

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (Crl.) No(s). 1105/2017

(Arising out of impugned final judgment and order dated 15-12-2016 in CRLM No. 44301/2016 passed by the High Court Of Patna)

BINOD KUMAR @ BINOD KUMAR BHAGAT

Petitioner(s)

VERSUS

THE STATE OF BIHAR

Respondent(s)

(With appln(s) for exemption from filing O.T.)

Date : 10-08-2017 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE J. CHELAMESWAR

HON'BLE MR. JUSTICE S. ABDUL NAZEER

For Petitioner(s) Mr. Nagendra Rai, Sr. Adv.
Mr. Shantanu Sagar, AOR

For Respondent(s) Mr. Manish Kumar, Adv.
Mr. E. C. Vidya Sagar, AOR

UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

The appeal is allowed in terms of the signed order.

Pending applications if any, stands disposed of.

(DEEPAK MANSUKHANI)
AR-cum-PS

(RAJINDER KAUR)
Court Master

(Signed order is placed on the file)