GAHC040014262023

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)
(ITANAGAR BENCH)

BA/104(AP)/2023

Shri Angam Wangpan,
S/o Honjang Wangpan,
R/o- Longsom, Longding Dist.
Po/Ps- Longding-782131
Longding District, Arunachal Pradesh
Mobile No- 08099209801

…**APPLICANT**

-VERSUS-

State of Arunachal Pradesh represented through Public Prosecutor, Government of Arunachal Pradesh, Itanagar.

…**RESPONDENT**

Advocate for the applicant :Mr. R. Rakshap.

Advocate for the respondent : Ms. T. Jini (Addl.P.P)

:::BEFORE:::

HON'BLE MR. JUSTICE KARDAK ETE

ORDER

14.11.2023

Heard Mr. R. Rakshap, learned counsel for the applicant. Also heard Ms. T. Jini, learned Additional Public Prosecutor for the State of Arunachal Pradesh.

2. By filing this application under Section 439 of the Code of Criminal Procedure, 1973, read with Section 37 of NDPS Act 1985, the applicant has prayed for post arrest bail of the accused person namely, **Shri Jongam Wangpan** in connection with Longding P.S. Case No. 32/2023 under Section 21(c) of NDPS Act,1985.

3. The case set up by the prosecution is that an FIR was lodged on 28.08.2023 by one T. Konia, Inspector, PS Longding, informing that on 28.08.2023 at 2000 hours a telephonic information received from sources that one vehicle scorpio (white in colour) bearing registration No. AR-02-9009 carrying manufactured psychotropic substances reportedly coming towards Longding from Assam via Kanubari. Accordingly, ADS (Anti-Drugs Squad) team accompanied by E/36 BN CRPF Longding and the Executive Magistrate Longding conducted Naka checking at Longding-Kanubari Highway below Zedua village. During Naka checking the suspected vehicle was stopped by the team at 2030 hours and accordingly search was conducted in the presence of Executive Magistrate and in the same manner a notice under Section of 50 NDPS Act was served to the persons on board to be searched in presence of

Magistrate. However, no incriminating substance was found from their body or their possession. Meanwhile, on further search of the vehicle, psychotropic substances i.e., Addnok-N, 10 packets containing 100 numbers of strips were found, which was hidden inside the tyre tube kept at the back of the vehicle and open/loss Addnok-N, 71 strips hidden inside cube tray kept on the passenger seat in the middle row of the car. Accordingly, the entire manufactured drugs were weighed and found 359.1 gms approximately and later seized on the spot in presence of the Executive Magistrate and the driver of the car. Further, it was found that Addnok-N comprises of Buprenorphine and Naloxone comes under the purview of NDPS Act. Accordingly, FIR was registered being Londing PS Case No. 32/2023 under Section 21(c) NDPS Act 1985 and the accused persons including the accused **Shri Jongam Wangpan**, were arrested by the Anti-Drugs Squad team on the same day.

4. Mr. R. Rakshap, learned counsel for the applicant submits that on 28.08.2023 when the alleged accused along with his friends and relatives were heading towards their home after visiting their Doctor, at Dibrugarh, Assam, they were stopped by the police, ADS (Anti-Drugs Squad) team accompanied by E/36 BN CRPF, Longding and the Executive Magistrate Longding conducted Naka checking at Longding-Kanubari Highway below Zedua village on the pretext of suspecting possession of drugs. As a law-abiding citizens, they readily obeyed the signal of the police and stopped their vehicle. To their utter shock and dismay the police discovered the medicine that was prescribed for the accused i.e., Addnok-N medicine and seized it and arrested the alleged accused alongwith 5 others for its possession stating to be some prohibited psychotropic substances which the accused persons have purchased as medicine for de-addiction of opium (kaani) duly prescribed by the Doctor through valid and legal

prescriptions. However, no incriminating substances were found or recovered from them or from their possession rather only 71 strips of loss Addnok-N, containing 710 nos. of tablets which belongs to them were seized from the middle row of the scorpio car but on further search 10 packets of Addnok-N alleged to have been found inside a tube tyre which is within the knowledge of the accused persons. The said 10 packets does not belong to the accused persons at all.

5. The learned counsel submits that the alleged accused is totally innocent and the victim of circumstances created by the Police Officer. The alleged accused is an opium (kaani) addict since childhood as consuming of kaani is normal in the Longding area back then. But after realizing that it is harmful and dangerous for their health and also not productive for their family well-being and also on request made by the applicant they went to Dibrugarh, Assam, for consulting Doctor at Assam Medical College & Hospital, Dibrugarh for de-addiction and corrective measures. Accordingly, the said doctor prescribed and suggested them to take medicine i.e., Addnok-10 tablet. The learned counsel for the applicant further submits that the alleged psychotropic substance is purely used for medicinal purpose for de-addiction of opium addict and the said medicine is given to highly opium addict as a corrective measure.

6. While referring to the prescription by the Doctor, the learned counsel for the applicant submits that it is true that the accused had the possession of the medicine which has been prescribed for 6(six) accused persons and advised them to consume 2 (two) to 3 (three) tablets a day. As per the seizure memo total tablets seized was 1710 tablets in total, therefore, if 1710 tablets are divided amongst the accused persons seized tablets run only for 48 days which

is 1(one) month and 17(seventeen) days. It is, thus, clearly demonstrates that the accused persons have bought/purchased the said medicine for months as the accused persons are all villagers/farmers and it is very hard for them to manage to come down to Dibrugarh frequently due to paucity of time and money.

7. Mr. R. Rakshap, learned counsel for the applicant submits that the special judge, NDPS, Khonsa has rejected the bail application of the accused on the ground that the alleged Doctor is yet to be examined by the investigating officer coupled with the ground of magnitude of the alleged offence. He submits that by now the statement of the Doctor has already been recorded and there is no single witness whom the accused may tamper or threaten if the accused is released on bail and there is no further requirement of detention of the accused. He further submits that the statement of the accused has already been recorded by the police and the accused person has been languishing in jail for last 42 days and therefore, he prays for release of the accused person on bail.

8. To buttress his submissions that seized drugs being allopathic drugs is for medicinal purposes by the accused person, Mr. Rakshap, learned counsel has placed reliance on the judgment of the Hon'ble Supreme Court in the case of ***the State of Uttaranchal vs. Rajesh Kumar Gupta*** in Appeal (Crl) No. 672/2006, wherein it has been held that once the drug is said to be used for medicine purposes, it cannot be denied that their acknowledged to be the drugs which would come under the purview of the description of the medicinal purposes.

9. Ms. T. Jini, learned Additional Public Prosecutor, while referring to the Case Diary submits that there is no dispute that contraband psychotropic

substances have been seized from the car of the accused person. She submits that at the stage FSL report is yet to be received. Medical Expert opinion has been sought from the District Medical Officer, Longding and the same is awaited. Therefore, the seizure of contraband items like Addnok-10 tablets weighed around 359.1 gms from the vehicle of the accused person coupled with the statements of the accused persons and the witnesses clearly shows existence of incriminating materials against the accused, for which the accused is not entitled to be released on bail.

10. Ms. T. Jini, learned Addl. Public Prosecutor, submits that the case of ***Rajesh Kumar Gupta*** (supra) relied on by the learned counsel for the applicant has been over-ruled in the case of ***Union of India & Anr. vs. Sanjeev V Deshpande*** reported in ***(2014) 13 SCC 1*** wherein the Hon'ble Supreme Court held that Rajesh Kumar Gupta's case has been wrongly decided.

11. I have considered the submissions advanced by the learned counsel for parties and also perused the Case Diary.

12. This Court take note of the fact that the accused person is an opium (kaani) addict since childhood. The accused along with other co-accused went to Dibrugarh to check out with the Doctor for treatment/de-addiction and for corrective measures. It transpires that the police team recovered 10 packets of Addnok-N containing 710 nos. of tablets and 71 strips of loss Addnok-N. On consideration of the statement of doctor it is seen that Addnok-N is prescribed for the de-addiction of opium addict and the said medicine is given to highly opium addict as a corrective measure. It is also seen that Addnok-N medicines were seized from the vehicle in which the accused persons were travelling.

13. In the opinion of this court once drugs are said to be used for medicinal

purposes, it cannot be denied that their acknowledged to be drugs which would come within the purview of descriptions of the expression "medicinal purposes and it would fall under the exceptions contained under section 8 of the NDPS Act.

14. Having considered the statement of the Doctor and the medicine being prescribed for de-addiction and corrective measures which has been undisputedly given to the accused persons, this Court is of view that the seized medicines which is used for medicinal purposes perhaps would be covered by the exceptions contained under section 8 of the NDPS Act 1985.

15. On careful perusal of the judgement of the Hon'ble Supreme Court in ***Sanjeev V. Deshpande*** (supra), this Court finds that the same was decided on different context. No doubt, ***Rajesh Kumar Gupta*** (supra) case has been held to be decided wrongly, in ***Sanjeev V. Deshpande*** (supra), however, the issue was completely different. For more clarity, paragraphs 29 and 34 are reproduced herein under:-

> "29. *We are unable to agree with the conclusion (reached in Rajesh Kumar Gupta's case) that the prohibition contained in Rule 63[11] of the 1985 Rules is applicable only to those narcotic drugs and psychotropic substances which are mentioned in Schedule-I to the Rules and not to the psychotropic substances enumerated in the Schedule to the Act. Such a conclusion was reached in Rajesh Kumar Gupta's case on the understanding that Rule 53 (prohibiting the import into and export out of India of the narcotic drugs and psychotropic substances specified in Schedule-I to the Rules) is the source of the authority for such prohibition. Such a conclusion was drawn from the fact that the other Rules contained in the Chapter permit import into and export out of India of certain narcotic drugs and psychotropic substances other than those specified in*

Schedule-I to the Rules. Unfortunately, the learned Judges in reaching such a conclusion ignored the mandate of Section 8(c) which inter alia prohibits in absolute terms import into and export out of India of any narcotic drug and psychotropic substance. Rules framed under the Act cannot be understood to create rights and obligations contrary to those contained in the parent Act."

"34. *On the above analysis of the provisions of chapters VI and VII of the 1985 Rules, we are of the opinion, both these Chapters contain Rules permitting and regulating the import and export of narcotic drugs and psychotropic substances other than those specified in the Schedule-I to the 1985 Rules subject to various conditions and procedure stipulated in Chapter VI. Whereas Chapter VII deals exclusively with various other aspects of DEALING IN psychotropic substances and the conditions subject to which such DEALING IN is permitted. We are of the opinion that both Rules 53 and 64 are really in the nature of exception to the general scheme of Chapters VI and VII respectively containing a list of narcotic drugs and psychotropic substances which cannot be dealt in any manner notwithstanding the other provisions of these two chapters. We are of the clear opinion that neither Rule 53 nor Rule 64 is a source of authority for prohibiting the DEALING IN narcotic drugs and psychotropic substances, the source is Section 8. Rajesh Kumar Gupta's case in our view is wrongly decided."*

16. In the above case, the Hon'ble Supreme Court dealt with the issue of prohibition of import into and export out narcotics drugs and psychotropic substances. That being the position, there may not be a bar to consider the present case on its own merit for consideration for release of accused person on bail.

17. I may proceed to consider the provision of section 37 of NDPS Act as enunciated by Hon'ble Supreme Court. A profitable reference may be made to

the case of NCB -vs- Mohit Aggarwal, wherein the Hon'ble Supreme Court has succinctly held the expression "reasonable grounds" used in clause (b) of sub-section (1) of section 37 of NDPS Act, that the expression "reasonable grounds" would mean credible, plausible and grounds for the Court to believe that the accused person is not guilty of the alleged offence. For arriving at such conclusion, such facts and circumstances must exist in a case that can persuade the Court to believe that the accused person would not have committed such an offence. Dove-tailed with the aforesaid satisfaction is an additional consideration that the accused person is likely to commit any offence while on bail. The Hon'ble Supreme Court further clarified that at the stage of examining an application for bail, the Court is not required to record a finding that the accused person is not guilty. The Court is also not expected to weigh the evidence for arriving at a finding as to whether the accused has committed an offence under the NDPS Act or not. The entire exercise that the Court is expected to undertake at this stage is for limited purpose of releasing him on bail. Thus, the focus is on the availability of reasonable grounds for believing that the accused is not guilty of the offences that he has been charged with and he is unlikely to commit an offence under the Act while on bail.

18. Reverting back to the case in hand, on consideration of the materials on record, I am of the view that since the medicine Addnok-N has been prescribed by the Doctor to the accused persons for de-addiction of opium addict and the said medicine is given to highly opium addict as a corrective measure, it would perhaps fall within the exceptions under Section 8 of NDPS Act. Thus, there is a reasonable ground for believing that the accused is not guilty of offences charged with and he is unlikely to commit an offence while on bail as he is an

addict undergoing de-addiction and corrective measure.

19. In the opinion of this Court, the applicant has sufficiently demonstrated that there are reasonable grounds to believe that the accused is not guilty of the offence alleged against him to him to admit for post arrest bail. Consequently, present post arrest bail is deserved to be allowed.

20. In the result, the accused person namely, **Shri Jongam Wangpan,** shall be released on bail forthwith in connection with Longding P.S. Case No. 32/2023 under Section 21(c) of NDPS Act,1985 on the following condition: -

1. The accused person shall furnish bail bond of Rs. 20,000/- (Rupees twenty thousand) only with surety of like amount to the satisfaction of the Learned Special Court.
2. The accused shall not tamper with the evidence.
3. The accused shall co-operate with the investigating authority.
4. The accused shall attend the Court as and when directed to do so.
5. The accused shall not leave the jurisdiction of the Learned Special Court, Longding without prior permission.

21. This bail application stands allowed and disposed of.

JUDGE

Comparing Assistant