

GAHC020003822023



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

**Case No. : Bail Appln./15/2023**

SHRI INAKHA Z ACHUMI,  
S/O LATE ZUTOVI ACHUMI,  
R/O H/NO-176,  
BLOCK-5,  
THAHEKHU VILLAGE,  
DIMAPUR, NAGALAND

VERSUS

THE STATE OF NAGALAND  
NAGALAND

**Advocate for the Petitioner** : A NIKATO WOTSA

**Advocate for the Respondent** : GOVT ADV NL

**BEFORE  
HON'BLE MR JUSTICE MRIDUL KUMAR KALITA**

**ORDER**

**Date : 16.10.2023**

**1.** Heard Mr. A. Nikato Wotsa, learned counsel for the petitioner. Also heard Mr. V. Zhimomi, learned Public Prosecutor for the State of Nagaland.

**2.** This application under Section 439 of the Code of Criminal Procedure, 1973 has been filed by the petitioner, namely,

Shri Inakha Z Achumi seeking bail of the accused, namely, Sri Lipon Barman, who was arrested on 03.06.2023 in connection with Special Case No. 21/2023 corresponding to Tseminyu P.S. Case No. 14/2023 under Section 22(c) of the NDPS Act, 1985 read with Section 34 of Indian Penal Code.

**3.** The gist of the accusation in this case is that on 26.05.2023, one Ahibu Seb, ASI of Police lodged an FIR before the Officer-in-Charge of Tseminyu Police Station, *inter alia*, alleging that on 25.05.2023 a motor vehicle checking patrolling was conducted at National Highway No. 2 near Tseminyu Old Town Junction by the personnel of Tseminyu Police Station at about 8.20 pm and during the search operation, a private night super bus bearing Registration No. NL-03-B-0729 was intercepted, while it was going towards Tseminyu. During search operation, 2400 nos. of *Alphrazolam* tablets were found in a parcel which were send from the counter at Dimapur. The said Alphrazolam tablets were seized and one accused person, namely, Joel Mech was apprehended in this connection. Later on, the sender of the said parcel Mr. Takutoshi Ao was also arrested. During the course of investigation, one co-accused, namely, Bishan Manipuri was arrested and on 31.05.2023 at about 2140 hours and his residence was searched. During the search operation, 38 nos. of Tuscovex-Plus (Codeine Syrup) bottles were found from his possession and during interrogation, it was revealed by the said accused that the said Codeine Syrup were procured by him from the accused Sri Lipon Barman.

**4.** Though, this case has been registered under Section 22(c) of NDPS Act, 1985 read with Section 34 of the Indian Penal Code, however, as codeine phosphate is involved in this case which,

if contained in a contraband beyond prescribed limit would constitute a manufactured drug under Section 2(xi) of the NDPS Act, 1985, hence, from the facts of this case, it appears that this case ought to have been registered under Section 22(c)/21(c)/29 of the NDPS Act, 1985.

**5.** Learned counsel for the petitioner has submitted that the accused, namely, Sri Lipon Barman has been falsely implicated in this case by the co-accused Bishan Manipuri. It is submitted that no seizure was made from the possession of the accused Sri Lipon Barman. It is further submitted by learned counsel for the petitioner that Sri Lipon Barman is an employee of M/s KA Drug Distributor, which is a wholesale distributor of drugs bearing license No. 644(N)/645(N) and located at S/No. B-19, Khezhie Complex NL Road, Dimapur- 797112, Nagaland.

**6.** It is further submitted by learned counsel for the petitioner that the accused Sri Lipon Barman being a salesman of M/s KA Drug Distributor had legally sold 30 bottles of TUSCOREX-PLUS (codeine) with batch No. TBHW0539 to the accused Sri Bishan Wamkhem who was having a valid license under M/s L.L. Distributor (License No. 731/732) and in this respect, learned counsel for the petitioner has also produced the invoice dated 30.05.2023 of M/s KA Drug Distributor which shows that 30 bottles of TUSCOREX-PLUS (codeine) was sold to the M/s L.L. Distributor.

**7.** Learned counsel for the petitioner has submitted that on 29.05.2023, the accused Sri Lipon Barman was at Delhi along with his wife and he was not at Kohima as alleged by the co-accused. In support of his contention, copies of flight tickets and railway tickets

has been furnished by the learned counsel for the petitioner.

**8.** Learned counsel for the petitioner has also submitted that the mandatory procedural requirement under Section 52A of the NDPS Act, 1985 has not been followed in this case as there was an inordinate delay in producing the seized contraband before the learned Magistrate.

**9.** On the other hand, learned Public Prosecutor, Nagaland has produced the case diary of Tseminyu P.S. Case No. 14/2023 and has submitted that the instant case involves the commercial quantity of contraband as the total quantity of seized codeine Syrup was 3.8 liters. He submits that there are incriminating materials against the present accused which shows that though the accused is an employee of a wholesale drug distributor firm, he used to sale codeine syrup to the co-accused by obtaining a fake distribution certificate from him. On the ground that there are materials available against the accused Sri Lipon Barman, learned Public Prosecutor vehemently opposed the grant of bail to the accused person.

**10.** I have heard the learned counsel for both the parties and have perused the materials in the case diary.

**11.** In the instant case, the co-accused was found in possession of 38 numbers of 100ml bottles cough syrup containing codeine phosphate. As the total weight of said cough syrup containing codeine phosphate was found to be 3.8 liters which is more than 1 kg in weight and as such same is also of commercial quantity.

**12.** As regards the question as to whether codeine is

prohibited manufactured drug under Narcotic Drugs and Psychotropic Substances (NDPS) Act, 1985 it appears that as per Entry No. 35 of the Notification relating to Manufactured Narcotics Drug [Government of India Notification No. S.O.826(E) dated 14.11.1985 and S.O.40(E) dated 21.09.1993 and S.O. No. 1431(E) dated 21.06.2011] issued in exercise of powers conferred by Sub-Clause (b) of Clause (xi) of Section 2 of the NDPS Act, 1985, Methyl morphine (commonly known as 'Codeine') and morphine and their salts (including Dionine), all dilutions and preparations except those which are compounded with one or more other ingredients and containing not more than 100mg of the drug per dosage unit, and with a concentration of not more than 2.5% in undivided preparations and which have been established in therapeutic practice were declared to be manufactured drug under section 2(xi) (b) the NDPS Act, 1985.

**13.** What is exempted from the purview of above notification is any combination which is less than 100mg of the drug per dosage unit, and with a concentration of not more than 2.5% in undivided preparations. However, in the instant case, the FSL report is yet to be collected by the Investigating Office so as to confirm as to whether the quantity of codeine phosphate in per 100ml bottle of the seized TUSCOREX-PLUS cough syrup is more than 100 mg so as to treat the seized Cough Syrup as a prohibited manufactured drug under Narcotic Drugs and Psychotropic Substances (NDPS) Act, 1985 as per Entry No. 35 of the Notification relating to Manufactured Narcotics Drug [Government of India Notification No. S.O.826(E) dated 14.11.1985 and S.O.40(E) dated 21.09.1993 and S.O. No. 1431(E) dated 21.06.2011].

**14.** Learned counsel for the petitioner has also produced the notification No. HFW-2022/B-2/2001/47 dated 3<sup>rd</sup> February, 2023 of the Government of Nagaland, Ministry of Health and Family Welfare Department wherein the permissible limit of oral liquids containing codeine and its salt is stated to be 5,000 (Five Thousand) phials which may be kept in a license premises.

**15.** At this stage of investigation, there is nothing in the case diary to show that the quantity of codeine phosphate in per 100ml bottle of the seized TUSCOREX-PLUS cough syrup is more than 100 mg so as to treat the seized Cough Syrup as a prohibited manufactured drug under Narcotic Drugs and Psychotropic Substances (NDPS) Act, 1985 as per Entry No. 35 of the Notification relating to Manufactured Narcotics Drug [Government of India Notification No. S.O.826(E) dated 14.11.1985 and S.O.40(E) dated 21.09.1993 and S.O. No. 1431(E) dated 21.06.2011], hence, considering the aforesaid facts and circumstances and also considering the fact that the accused Sri Lipon Barman is an employee of a licensed drug distributor firm and that he has been detained behind the bar last since 03.06.2023 (last 135 days) and there is no other material, at this stage, apart from the statement of the co-accused to implicate him in this case, this Court is of considered opinion that at this stage of investigation, there are reasons to believe that he may not be guilty of the offence under Section 21(c) of the NDPS Act, 1985. Further, at this stage, there is no evidence, in the case diary, of previous involvement of the accused Sri Lipon Barman in any case involving offence under NDPS Act, 1985.

**16.** For the reasons mentioned herein above, this Court is of the considered opinion that the embargo of Section 37 of the NDPS Act, 1985 does not appear to be applicable in respect of the accused Sri Lipon Barman in this case. As the accused Sri Lipon Barman has already been detained behind the bar since last 135 days, his further custodial detention does not appear to be necessary for the sake of fair completion of the investigation, if he cooperates with the Investigating Officer.

**17.** In view of above, the accused Lipon Barman is hereby directed to be released on bail of Rs.30,000/- (Rupees Thirty Thousand) only with one surety of like amount to the satisfaction of learned Special Judge (NDPS), Kohima, subject to the following conditions:-

- (i)** That the accused Sri Lipon Barman shall co-operate with the Investigating Officer in fair completion of the investigation of Tseminyu P.S. Case No. 14/2023 and shall appear before him as and when so required for the sake of fair investigation;
- (ii)** That the accused Sri Lipon Barman shall not leave the jurisdiction of the Court of learned Special Judge (NDPS), Kohima without prior leave of the said Court and intimation to the Investigating Officer;
- (iii)** That the accused Lipon Barman shall provide his contact details including the residential address (both present and permanent) to the Investigating Officer and shall in case of any change of the contact detail intimate the Investigating Officer about the same;
- (iv)** That the accused 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 from disclosing such facts to the Investigating Officer or the Court;

**(v)** That, while on bail, the accused shall not indulge in any offence similar to that with which he is charged in the instant case.

**18.** With the above observation, this bail application is disposed of.

**19.** Send back the case diary.

Sd/-  
**JUDGE**

**Comparing Assistant**