

GAHC020004892023



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

**Case No. : Bail Appln./18/2023**

SHRI CHISAHU H. ZHIMO,  
S/O HOKUTO ZHIMO,  
R/O TUKUNASAMI VILLAGE,  
DISTRICT ZUNHEBOTO, NAGALAND

VERSUS

THE STATE OF NAGALAND  
REPRESENTED BY THE PUBLIC PROSECUTOR,  
GAUHATI HIGH COURT, KOHIMA BENCH

**Advocate for the Petitioner** : TOSHI O. LONGKUMER

**Advocate for the Respondent** : P.P, NAGALAND

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

**ORDER**

**Date : 17.10.2023**

**1.** Heard Mr. Toshi O. Longkumer, learned counsel for the petitioner. Also heard Mr. K. Angami, 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,

Sri Chisahu H. Zhimo seeking bail of the accused, namely, Sri Robin Zhimo, who has been detained behind the bar since 29.07.2023 in connection with Special Case No. 42/2023 corresponding to North P.S Case No. 0036/2023 under Section 22(b) of the NDPS Act, 1985.

**3.** The gist of the accusation in this case is that on 30.07.2023, Yienphieh Konyak, SI of Police lodged an FIR before the Officer-in-Charge of North Police Station, *inter alia*, alleging that on 29.07.2023 at about 8.30 pm, the Mobile Unit, DEF, Kohima was conducting vehicle checking, it intercepted one vehicle (Alto) bearing No. NL-07-CA-7513 below BSF Camp area, Kohima and on checking 85 nos. of bottles of cough syrup containing codeine was recovered from the said vehicle and, thereafter, the accused, namely, Sri Robin Zhimo was apprehended for possession of 85 nos. of cough syrup containing codeine.

**4.** Learned counsel for the petitioner has submitted that on 29.07.2023, the accused Sri Robin Zhimo was travelling in the Alto vehicle bearing No. NL-07-CA-7513 which belonged to his acquaintance and at the time of his apprehension he was sitting in the passenger seat. It is further submitted that when the said vehicle reached near BSF Camp area at Kohima, at around 8.30 pm, some personnel who claimed to be personnel of Mobile Unit, DEF stopped the vehicle and asked them to open the boot space of vehicle and thereafter some bottles of cough syrup containing codeine were found from the said vehicle and his acquaintance were apprehended. It is further submitted by learned counsel for the petitioner that after preliminary inquiry, the vehicle, which was seized, was released along with the friend of the accused, however, the accused Sri Robin Zhimo was detained.

**5.** Learned counsel for the petitioner has submitted that the accused Sri Robin Zhimo has been falsely implicated in this case and he was not allowed even to witness the process of seizure of the cough syrup which is stated to have been recovered during the search operation. It is also submitted that the petitioner is not the owner of the vehicle and he did not know if anything was being carried in the vehicle without his knowledge and, therefore, it is submitted by learned counsel for the petitioner that the accused Sri Robin Zhimo was not in conscious possession of any cough syrup which was seized. It is further submitted by learned counsel for the petitioner that the seized contraband in the instant case consisted of 85 bottles of cough syrup of 100 ml each is used for therapeutic purpose containing miniscule quantity of codeine i.e., 0.2% of concentration of codeine in each bottle which may not fall within the category of manufactured drug as per notification issued by the Union Government.

**6.** Learned counsel for the petitioner has submitted that the accused Sri Robin Zhimo has been detained behind the bar since 79 days and considering the fact that there is no instance of his being involved in any such offence on earlier occasion and also considering the fact that materials on record does not show that the cough syrup from the vehicle was in conscious possession of the accused person and further that the quantity of codeine contained in the seized cough syrup was within prescribed limit, hence, as per submission of learned counsel of the petitioner, the embargo of Section 37 is not applicable in this case.

**7.** On the other hand, learned Public Prosecutor has submitted that though the instant case is registered under Section

22(b) of the NDPS Act, 1985, this case ought to have been registered under Section 21(c) of the NDPS Act, 1985 as the contraband found in this case is 85 nos. of bottles of cough syrup of 100ml each containing codeine phosphate. It is also submitted by learned Public Prosecutor that the embargo of Section 37 would be applicable in this case as the contraband contains commercial quantity of cough syrup containing codeine phosphate and as the investigation of this case is still under progress and as the FSL report is yet to be collected, the accused Sri Robin Zhimo may not be allowed to go on bail.

**8.** I have heard the learned counsel for both sides and have perused the case diary of North P.S Case No. 0036/2023 which was placed before this Court by learned Public Prosecutor.

**9.** 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.

**10.** Though, this case has been registered under Section 22(b) of the NDPS Act, 1985, however, it appears that the quantity of seized contraband in this case is 85 nos. of bottles of cough syrup containing codeine phosphate was of 100ml each, hence, total weight of seized cough syrup comes to 8.5 liters which is beyond the permissible limit of one kg., hence, the quantity of seized contraband in this case is, in the considered opinion of this Court is of commercial quantity. As regards, percentage of codeine phosphate contained in per 100ml bottle of Tuscorex cough syrup, though it is submitted by learned counsel for the petitioner that the seized contraband contained only miniscule percentage i.e., 0.2% concentration of codeine in each bottle. However, considering the submissions made by learned Public Prosecutor and considering the fact that the Tuscorex cough syrup which is generally available for therapeutic purpose contains 100mg of codeine per 5ml of cough syrup thereby meaning that 100ml cough syrup contain 200mg of codeine phosphate, it appears that the codeine content of the seized cough syrup is allegedly beyond prescribed limit of 100mg of codeine per dose unit which is exempted from the purview of above mentioned notification.

**11.** Thus, the submission of learned counsel for the petitioner that Codeine seized in the instant case is not a narcotic drug is not found to be acceptable. As the quantity of seized Codeine, in the instant case, is found to be of commercial nature, the embargo of Section 37 of the Narcotic Drugs and Psychotropic Substances (NDPS) Act, 1985 comes into play and as on the basis of materials available on record at this stage, it may not be possible to hold at

this stage, that there are reasonable grounds for believing that the present petitioner is not guilty of offence charge against him and that he is not likely to commit any offence while on bail.

**12.** For the reasons mentioned above, this Court is of considered opinion that due to embargo of Section 37 of the NDPS Act, 1985, the accused may not be released on Robin Zhimo, hence, the prayer for bail is rejected.

**13.** This bail application is accordingly disposed of.

**14.** Send back the case diary.

Sd/-

**JUDGE**

**Comparing Assistant**