

GAHC010206432024



2024:GAU-AS:11868

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

Case No. : Bail Appln./3008/2024

BADRUZ ZAMAN CHOUDHURY
S/O NAZIM UDDIN CHOUDHURY, R/O BARENGA PT-III, P.S. SILCHAR,
DISTRICT CACHAR, ASSAM

VERSUS

STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

Advocate for the Petitioner : MR. R P SARMAH, MRS. R RONGMEI

Advocate for the Respondent : PP, ASSAM,

BEFORE
HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

ORDER

29-11-2024

Heard Mr. R. P. Sarmah, learned Senior Counsel assisted by Ms. R. Rongmei, learned counsel for the petitioner and Mr. K. K. Parasar, learned Additional Public Prosecutor, Assam for the State.

2. The petitioner, namely, **Sri Badruz Zaman Choudhury**, son of Nazim Uddin Choudhury, resident of Village-Berenga Pt-III, Police Station-Silchar, District-Cachar

was arrested on 10.08.2024 in **Silchar Police Station Case No. 257/2024**, registered under Sections 22(C) of the NDPS Act, 1985 corresponding to G.R. No. 618/2024 has filed this application under Section 483 BNSS, 2023 for his bail in **Silchar P.S. Case**, as he is in custody till date in the said case.

3. As per the FIR dated 21.03.2024 lodged by the informant before the Officer-in-Charge of Silchar Police Station, the case is that on the intervening night of 20.03.2024 and 21.03.2024 at around 01:00 AM reliable information was received from source that the petitioner stored huge quantity of suspected NDPS items in his house at Berenga Part-II under Silchar Police Station of District-Cachar. Said information was entered as GD Entry No. 618 dated 21.03.2024.

4. Police personnel from Silchar Police Station with due authorization reached the house of the petitioner at Berenga Part-II and in presence of independent witnesses following the due process searched the house of the petitioner, during which 380 numbers of bottles of Vincof TK, suspected to be contraband cough syrup, each bottle containing 100 ml were recovered, which were kept concealed in his house, along with cash amount of Rs.12,500/-, a Maruti Suzuki 800 Vehicle, however, the petitioner was not found at his said house. After following the procedure, the recovered items were counted on the spot and were seized in presence of local independent witnesses; those seized suspected contraband items were packed and sealed with metallic seal at the place of occurrence in presence of witnesses. On completion of all formalities, the police personnel departed from the place of occurrence with the seized items and reached the Silchar Police Station. Thereafter, the said FIR was lodged in which it was categorically stated by the informant that the petitioner who is also an accused of Silchar P.S. Case No. 243/2024 under Sections 341/325/354/143/448/326/427/435 IPC is wanted in the said case. Accordingly, the said FIR was registered as Silchar Police Station Case No. 257/2024, under Section 22(C) of the NDPS Act.

- 5.** After making due inventory of the seized suspected NDPS items, its samples were forwarded to the FSL for its examination and report.
- 6.** The petitioner evaded police in said Silchar Police Station Case No. 257/2024 for about 4 months and then he could be arrested and was produced before the learned Special Judge (NDPS), Cachar, Silchar on 11.08.2024 and since then he is in custody.
- 7.** Mr. Sarmah, learned Senior Counsel appearing for the petitioner submitted that the Vincof TK cough syrup is not a Scheduled Drug under the NDPS Act, rather, it being a cough syrup comes under the Schedule of Drugs and Cosmetics Act, 1940. As such, Mr. Sarmah has urged that the petitioner has been kept in custody illegally since 11.08.2024.
- 8.** It is also submitted by Mr. Sarmah, learned Senior Counsel that the petitioner is a dealer of medical products having a valid licence and that he was falsely implicated in the case and has become a victim of circumstances.
- 9.** Mr. Sarmah, learned Senior Counsel also contended that the medicine seized by police in the case allegedly marked as contraband items though it is not and that the alleged seized medicine bottles have not been recovered from his possession and therefore, the provision of Section 22(C) of the NDPS Act, is not applicable to him.
- 10.** According to Mr. Sarmah, learned Senior Counsel, the Vincof TK cough syrup does not contain any schedule drug and that there is wrong calculation of measuring said seized cough syrup in detaining him in custody under Section 22(C) of the NDPS Act. Mr. Sarmah further submitted that the prosecution violated the provisions of Sections 42, 50 and 52 of the NDPS Act, 1985 while making search and seizure while seizing the cough syrup found in his house.
- 11.** Moreover, considering his detention since 11.08.2024 and the seizure illegally

being made, it is submitted by Mr. Sarmah, learned Senior Counsel that the petitioner is entitled for his bail in said Silchar Police Station Case No. 257/2024. Mr. Sarmah also relied upon the decision of the Hon'ble Supreme Court in the case of *Md. Sahabuddin and another Vs. State of Assam* decided on 05.10.2012 and submitted that the prosecution failed to place that in each of the 100 ml bottles of Vincof TK cough syrup, seized in the case, it contained prohibited quantity of Codeine Phosphate that is meant for human consumption so as to bring it under the penal provisions of Section 22(C) of the NDPS Act.

12. The Court by order dated 30.09.2024 called for the scanned copy of the records of said Silchar Police Station Case No. 257/2024.

13. The FSL report dated 22.07.2024 shows that the Vincof TK cough syrup, seized in the case, confirmed the presence of Codeine (as Codeine Phosphate), a Scheduled Drug under NDPS Act.

14. Though the petitioner stated that he had a valid license as a Dealer of Medical Products and in that regard has also annexed a copy of license issued by the Deputy Drug Controller, under State Drugs Control Administration, Government of Assam issued on 15.02.2018 in Form 20 under Rule 61 (1) of the Drugs and Cosmetics Rules, 1945 vide UBIN:AA09724/AKMPC4004A/ 02/2018; UAIN:SDC/F2/CA/000214/02/2018; License No.CHR/ ONL/R-1133 in the name of the petitioner for M/s. MAA Medical Stores at Meherpur Kathal Point, Silchar, District-Cachar as Annexure-3, but on its perusal, it can be seen that the said license was in force from 15.02.2018 to 14.02.2023.

15. On being enquired, the petitioner failed to place anything before the Court that the said license was valid w.e.f., 15.02.2023. Moreover, the 380 numbers of bottles of Vinkof TK Cough Syrup, each bottle containing 100 ml was recovered on 21.03.2024 and seized in the case, was from the house of the petitioner at

Berenga Part-II and not found in MAA Medical Stores at Meherpur Kathal Point, Silchar, District-Cachar, the place for which petitioner earlier had a license.

16. The Hon'ble Supreme Court, in a Bench consisting of three Hon'ble Judges in the case of *Hira Singh and another Vs. Union of India and others* reported in (2020) 20 SCC 272, decided on 22.04.2020 have held that — *In case of seizure of mixture of Narcotic Drugs or Psychotropic Substances with one or more neutral substance(s), the quantity of neutral substance(s) is not to be excluded and to be taken into consideration along with actual content by weight of the offending drug while determining the "small or commercial quantity" of the Narcotic Drugs or Psychotropic Substances.*

17. The Codeine is a Scheduled NDPS item having its chemical name 3-0-methylmorphine.

18. Mr. K. K. Parasar, learned Addl. PP, Assam placed the office order of the Commissioner of Food and Drug Administration, Assam, Government of Assam dated 11.06.2021 whereby a C&F/CFA/Depot can possess Codeine based cough syrup, branded or generic, as per supply and the Wholesalers from C&F/CFA/Depot in Form 20B and 21B of said 1945 Drug Rules can have 2000 bottles per month and further, a retailer can have 100 bottles per month of (Total Quantity/Stock) per month from all wholesalers.

19. It is already been noted above that the petitioner on the date of recovery and seizure did not have any valid license for stocking such numbers of 380 bottles of Vinkof TK Cough Syrup that too, at Berenga Part-II under Silchar Police Station of District-Cachar.

20. It is seen that charge-sheet in Silchar Police Station Case No. 257/2024 against the petitioner was filed on 31.08.2024 and thereafter, the said case has been registered as NDPS Case No. 113/2024 before the learned Special Judge

(NDPS)-cum-Sessions Judge, Cachar, Silchar.

21. It is to be noted herein that the petitioner evaded police in said Silchar P.S. Case No. 257/2024 for about 4 months and then he could be arrested. He is also a wanted accused in another police case, being Silchar P.S. Case No. 243/2024.

22. Considering the materials in the case record and his detention in custody since 11.08.2024, the Court is of the view that it is not a fit case to grant bail to the petitioner, namely, **Sri Badruz Zaman Choudhury**, son of Nazim Uddin Choudhury, in NDPS Case No. 113/2024 arising out of said Silchar Police Station Case No. 257/2024 corresponding to G.R. No. 618/2024.

23. Accordingly, this bail application of the petitioner, **Sri Badruz Zaman Choudhury**, in NDPS Case No. 113/2024 arising out of said Silchar P.S. Case No. 257/2024 **stands rejected**.

JUDGE

Comparing Assistant