HIGH COURT OF TRIPURA
AGARTALA

BA 119 of 2020

For Applicant(s)	: Mr. B. Deb, Adv.
For Respondent(s)	: Mr. R. Datta, PP.

HON'BLE MR. JUSTICE S. TALAPATRA

Order

18.11.2020

Heard Mr. B. Deb, learned counsel appearing for the applicant namely Shri Santosh Kumar Jalan and also heard Mr. R. Datta, learned Public Prosecutor appearing for the state.

[2] The applicant is in custody since 12.10.2020 in connection with the AD Nagar PS case No.089 of 2020 under Section 21(c)/25/27(a)/29 of Narcotic Drugs and Psychotropic substances Act, 1985 (NDPS Act in short). Hence, this application under Section 439 of the CrPC.

[3] One Sub-Inspector of Police namely, Kiran Sankar Choudhury of AD Nagar Police Station lodged the complaint to the Officer-in-Charge, AD Nagar Police Station alleging *inter alia* that from one secret source it was learnt that a good quantity of contraband items were stored in the godown of one Santosh Kumar Jalan of Badharghat under AD Nagar PS. Having that information entered in the station diary being GD Entry dated 12.10.2020, the informing police officer namely, Kiran Sankar Choudhury, accompanied by the Sub-Divisional Police Officer, Amtali and his staff, reached near the godown of the accused-applicant. On reaching

there, they found two persons standing in front of the godown which was found under lock and key. On asking, both the persons had disclosed their identity as Santosh Kumar Jalan and Gaurav Jalan.

[4] According to informant, they disclosed that the godown belongs to them. At their request, Santosh Kumar Jalan opened the lock of the shutter of the godown and after entering inside the godown, they found another shutter under lock and key. But this time, two persons namely Santosh Kumar Jalan and Gaurav Jalan denied to open the shutter. Thereafter, in presence of the independent witnesses, they broke the lock of the shutter and went inside the godown. After observing all legal formalities, according to the informant, they recovered 102 nos of white colour and 02 nos yellow colour total 104 nos nylon sacks containing huge quantity of contraband items in the form of *Phensedyl* and Eskuf plastic bottles.

[5] On preliminary interrogation, the accused-applicant and his son Gaurav Jalan, could not give any satisfactory answer to their reply and failed to produce any document in respect of the contraband items. Those contraband items were seized on the spot on following other legal procedure. Contraband items as seized were combined in separate batches. The items as seized are as follows:

> 1. Total 14,900 (Fourteen thousand nine hundred)) nos bottles Rx chlorpheniramine malcate codeine phosphate cough Linctus phensedyl each containing 100ml, which batch no.PSB0226 mfg dated Aug-20 expiry date Jan-2020, manufactured in India by Abbott health care pvt. Ltd. village Bhatauli Khurd, PP Baddi 173205 district Solan, Himachal Pradesh.
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> 2. Total 2,300 (Two thousand three hundred) nos bottles RX chlorpheniramine maleate codeine phosphate cough Linctus

phensedyl each containing 100 ml, which batch no. PSB0261 mfg date Aug-20 expiry dated Jan-2022, manufactured in India by Abbott health care pvt. Ltd. Village Bhatauli Khurd, PO Baddi 173205 district Solan, Himachal Pradesh.

3.Total 10,720 (Ten thousand seven hundred twenty) nos bottles Rx codeine phosphate & chlorpheniramine maleate syrup "Eskuf" each containing 100 ml, which batch no.KESL-164 mfg dated 06/2020, expiry date 05/2022, manufactured in India by Laborat pharmaceuticals Indai Ltd (unit-II)31, Rajban Road, nariwala, paonta sahib (H.P).

4. Total 3,200 (three thousand two hundred) nos bottles Rx codeine phosphate & chlorpheniramine maleate syrup "Eskuf" each containing 100 ml, which batch no.KESL-207 mfg date 06/2020, expiry dated 05/2022, manufactured in India by Laborat Pharmaceuticals India Ltd (Unit-II) 31, Rajban Road, nariwala paonta sahib (H.P).

5. Total 480 (Four hundred eighty) nos bottles Rx codeine phosphate & chlorpheniramine maleate syrup "Eskuf" each containing 100 ml, which batch no.KESL-217 mfg date 06/2020, expiry dated 05/2022, manufactured in India by Laborat Pharmaceuticals India Ltd (Unit-II) 31, Rajban Road, nariwala paonta sahib (H.P).

[6] It has been alleged in the complaint that the accused-applicant and his son Gaurav Jalan had 'full knowledge' of the seized contraband items and they stored those in their godown illegally with intention to transfer the contraband items to various parts of the state. On the basis of the said complaint, the said police case was registered and immediately, the accused-applicant along with his son was arrested.

[7] Mr. Deb, learned counsel appearing for the accused-applicant has submitted that the premises from where the purported contraband items were seized, was not under the possession of the accused-applicant or his son. The godown in that premises was under possession of one Biplab Debnath, son of Premananda Debnath of

Jangalia, PS-Bishalgarh by virtue of an agreement dated 09.10.2020 which was authenticated by the notary on the same date. According to the said agreement, Smt. Neelam Jalan, wife of the accused-applicant, is absolute owner in possession of the said godown. The location has been described in the agreement by forming a separate schedule as under:

SCHEDULE

Dist- West Tripura, PS- A.D. Nagar, Tahashil, & Mouja-Badharghat, khatian No.9378/2, C.S Plot Nos. 7067/22872 (P), 7064/22872 (P), 7065, 22873 (P), R.S Plot Nos 25590, 25591, 25655 land measuring 0.1400 acres. The first party lease out more or less 1000 sq ft with pucca construction which is butted and bounded by :-
In the north :- Road
In the south:- 1srt party self.
In the East :- 1st Party Self
In the West: 1st Party self.
Within this boundary total land measuring more or less 1000 sq ft. with pucca construction.

[8] It has been clearly stated in that agreement on the stipulated rent the premises will be in possession of Biplab Debnath from 09.10.2020 to 09.10.2021. The accused-applicant has submitted that the said agreement was handed over to the investigating police officer. When the search and seizure was caused i.e. 12.10.2020, the said godown was under active and absolute possession of Biplad Debnath. But without investigating that aspect, the accused-applicant and his son were arrested and they were implicated in the case malafide.

[9] Mr. Deb, learned counsel has further submitted that the Special Judge, West Tripura, Agartala did not consider that aspect.

That apart, Mr. Deb, learned counsel has contended that in course of the seizure, provisions of Section 100 of the CrPC was violated and hence, the seizure has to be discarded.

[10] Mr. R. Datta, learned PP has produced the Case Diary and submitted that during the investigation, the police has collected materials to show that the accused-applicant was in control of the possession of the said premises from where the alleged narcotic substances were seized. Mr. Datta, learned PP was emphatic while relying one statement of the wife of the accused-applicant. It appears that the tenancy agreement dated 09.10.2020 was handed over to the investigating police officers and hence, the original agreement is available in the Case Diary. According to Mr. Datta, learned PP, the seizure is carried out in accordance with law and there is no infirmity.

[11] Having scrutinized the case diary, it evinces that now, the statement of the wife of the accused-applicant in respect of the possession has been collected. It is to be noted that the accused-applicant did not challenge the fact of seizure in this application. Further, it may not be relevant on that since the accused-applicant has denied possession of the said premises and made out a categorical case that the premises was under control of one Biplab Debnath who had entered in the tenancy agreement on 09.10.2020. The possession was taken on the day of execution of the agreement itself, for a period of one year. This court has considered the statement of Smt. Neelam Jalan as made to the investigating officer carefully. She has stated that two rent agreements she had deposited

in respect of the total premise. She had further stated that the said agreement dated 09.10.2020 was executed by her at the instance of her husband and son. We have seen also the agreements where the area has been sought to be well defined and demarcated, though Neelam Jalan has stated the room/godown has not been identified. She has stated that she had heard that narcotic substances were found in the room/godown under their possession. This is a mere hearsay evidence and there is no disclosure from whom she heard the said fact.

[12] From perusal of the two agreements one dated 07.10.2020 and the other dated 09.10.2020 as deposited by said Neelam Jalan, it appears that the owner of the premises was Neelam Jalan and on that capacity she entered in the agreement. There is no evidence involving the accused-applicant in respect of the seized narcotic substances. This court by the order dated 10.11.2020 asked the investigating officer to instruct Mr. Datta, leanred PP to find out whether location vis-à-vis the schedule in the agreement from where narcotic materials were seized, is covered by the premises described in the schedule of the tenancy agreement dated 09.10.2020 executed by Neelam Jalan, wife of the applicant in favour of one Biplab Debnath as aforestated.

[13] A report has been produced before this court beyond what was asked for. Without going by the description in the schedule, an abrupt comment has been made that as per the agreement, the room is situated "in the northern side of the said building" and

thereafter near the room of Biplab Debnath another room is situated which is at the southern side of the room of Biplab Debnath. The contraband substances were seized from the nearby side room of Biplab Debnath. In the said report, it has been stated that the accused-applicant and his son were jointly running the business in association with Shri Shaktijit Sarkar and Biplab Debnath. Both are absconding to avoid police arrest. The said description of the location is unacceptable on face of the record i.e. the tenancy agreement dated 09.10.2020 inasmuch as from another agreement as found with the case diary and as submitted reportedly by Neelam Jalan to the police officer, it surfaces that two rooms/godowns are situated front-rear position, having the road in the northern boundary. The fact has been admitted by the investigating officer as well. It appears from that deed of agreement that another construction measuring 600 sq.ft was leased out to one Shaktijit Sarkar and the description as provided in the schedule shows that the side room is part of the construction having its boundary along with the road.

[14] In view of this, it can only be stated that there are two rooms side by side. As in the report, it has been admitted that both Shaktijit Sarkar and Biplab Sarkar were running this business from that room. It is only apparent that they were utilizing that spaces and the investigating officer has taken the advantage of loose description of the premise to frame the present accused-applicant. The allegation in the First Information Report is very categorical. It states that "under the above, it is clearly evident that Shri Santosh Kumar Jalan

and his son Gaurav Jalan had full knowledge of the seized contraband items" and also stored in their godown illegally with intention to further transfer the contraband articles to various part of the Tripura State. But the fact of renting out of the premises has been avoided. Being the owner of the premise, in all circumstances she can part the possession by lease or by some other form of agreement. The possession can legally be handed over to other persons for their use. Even in the report, those two agreements have not been doubted by the investigating officer. To stage mange the fact, it has been stated in the report that the business was being jointly run by the accused-applicant and his son with tenants of the said premises. But there is no evidence available in the case diary in respect of the said allegation.

[15] Having due regard to the provision of Section 37 of the NDPS Act, this court is of the view that there is no material to prove involvement of the accused-applicant, as of now, to have drawn an impression that the accused-applicant has been involved in the illegal storing of those narcotic substances, rather he had cooperated with the police officer when they tried to enter into the godown. Obviously, when some godown is in the control of the tenant, the accused-applicant might not have given the keys and as a result they had broken down the keys and entered into the premises.

It can therefore be inferred that without any prejudice to the investigation that the accused-applicant may be released on bail subject to conditions. Accordingly, it is directed that the accused-

applicant shall be released on bail on furnishing bail bond of Rs.50,000/- supported by two sureties of the like amount to the satisfaction of the court of the Special Judge (under NDPS Act) West Tripura, Agartala subject to condition that the accused-applicant namely, Santosh Kumar Jalan shall not leave the state with prior permission of the Special Judge (under NDPS Act), West Tripura, Agartala and he will not try to influence the witnesses or to meddle with the investigation in any manner.

In terms of the above, this application stands allowed and disposed of. The case diary as produced be returned forthwith through Mr. Datta, learned PP.

JUDGE

HIGH COURT OF TRIPURA

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