HIGH COURT OF TRIPURA
AGARTALA

BA 121 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 Uttam Bhattacharjee and also heard Mr. R. Datta, learned Public Prosecutor appearing for the state.

[2] The applicant is in custody since 10.09.2020 in connection with West Agartala PS Case No. 2020/WGA/149 under Section 22(c) and 25 of the Narcotic Drugs and Psychotropic Substances Act 1985 NDPS Act in short. Hence this application is under Section 439 of the CrPC.

[3] One Inspector of Police of Anti Narcotic Unit, Agartala lodged a complaint to the Officer-in-Charge, West Agartala Police Station alleging inter alia that on the tip of information received from a separate source that Narcotic substances are stored in a marriage hall namely, Puspangan under Ramnagar TOP, the matter was informed to the Superintendent of Police (Anti Narcotic) and as per her direction, a team comprising of the complainant namely Pradip Sarkar, Inspector of Police, DSP Tarun Debbarma, DSP Paramita Pandey and other officers and staffs of anti-narcotic unit had been to Ramnagar, TOP. The information, as afroestated, having entered in the station diary, being Ramnagar TOP GD No. 14 dated 10.09.2020, they reached to the said marriage hall situated at TG Road,

Krishnanagar. The secret source identified the exact location. They searched the said marriage hall and recovered the following materials:

(1) Two brown colour gunny bags containing total 20160 Nos SP(Spasmo proxyvon) plus Capsules of batch No.JU-10228.

(2) One grey colured SAMSUNG DUOS Moblie phone IMEI No.3521 2810 8025 233/01 and 3521 2910 8025 231/01 with one Airtel SIM vide contact no. 8974336158.

(3) One grey colured SAMSUNG DUOS Mobile phone IMEI 3540 1009 6018 545/01 and 3540 1109 6018 543/01 with one Vodafone /SIM vide contact No.8974777635. It has been noted that those were recovered from the possession of Uttam Bhattacharjee, owner of the said marriage hall.

[4] They seized those materials in presence of witnesses and arranged to take photographs of the action relating to raid, search and seizure. On the basis of the said complaint, West Agartala PS Case No. 2020WAG149 under section 22(c)/25 NDPS Act 1985 was registered. The accused-applicant was arrested immediately.

[5] Mr. Deb, learned counsel appearing for the accused (the applicant) has submitted that there is no compliance of Section 42(2) of the NDPS Act, meaning that the grounds of belief was not communicated to the superior officer in writing. According to him, observance of the said provision is a mandatory one. He has further submitted that from the pre search memo, it would be apparent that the officials who searched the premises were not searched in presence of local witnesses. Mr. Deb, learned counsel was quite emphatic while stating that the concerned

marriage hall is wide open on three sides and CCTV cameras are installed in all sides of the said building. The accused had also requested to check and collect the CCTV footage but they did not. Even the positions of the CCTV cameras were photographed and had been submitted in the court of the Special Judge (under NDPS Act). Mr. Deb, learned counsel has further submitted that at the time of seizure, the said building (marriage hall) was under possession of one Abhijit Deb by virtue of one agreement dated 04.10.2017 (Annexure-5 to the application). The state has, however, not contested the said fact.

[6] Mr. Deb, learned counsel has further submitted that the accused has been served a notice under Section 13(2) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002. That apart, his wife has been suffering since long from various ailment. Even she had undergone bypass surgery in the year 2017 and in support of that contention some medical records of Jayashree Bhattacharjee (wife of the accused) has been produced before this court. Mr. Deb, learned counsel has contended that the possession of the said marriage hall, from where the seizure was made, was entirely with that Abhijit Deb and hence, the accused cannot be implicated in the case for having stored the narcotic substances as recovered from the marriage hall, the rented premises by virtue of the agreement dated 04.10.2017 which had been executed for a period of five years.

[7] That apart, Mr. Deb, learned counsel has submitted that the police has been acting *mala fide* and implicated the accused person without any evidence that either he was in possession of the narcotics

substances or he owned those substances. Mr. Deb, learned counsel has stated that recently Delhi High Court, having found the discrepancies between the footage of CCTV cameras and the police version, granted the bail in favour of the persons, accused of the recent Delhi riot. Mr. Deb, learned counsel has urged this court for directing production of CCTV footage for inspection by this court.

[8] Initially, there was a confusion whether the seized materials fall within the category of narcotic substance, but from perusal of the schedule of psychotropic substances in the NDPS Act, it appears the seized material namely tramadol has been included in the said schedule against the serial no. 110-Y. The said entry was made on 26.04.2018. The concerned notification is also available in the case diary.

[9] Mr. R. Datta, learned PP has appeared for the state and submitted that the seized narcotic substances were recovered from the personal and physical possession of the accused. He has referred the statement of the witnesses as recorded by the police on 30.09.2020 and 06.10.2020. This court has perused those statements. Mr. R. Datta, learned PP has contended further that those statements sufficiently indicate the involvement of the accused person in the offences. In terms of the order dated 10.11.2020, Mr. Datta, learned PP has submitted a report of the investigating officer before this court in a sealed envelope. The said report dated 18.11.2020 has clearly recoded that 20160 Spasmo Proxyvon Plus capsules were seized from the possession of Uttam Bhattacharjee near Wash-basin of Puspangan marriage hall and that wash basin is located outside the hall.

[10] Having perused the case diary and the report, this court is of the view that no benefit under Section 437 of the NDPS Act can be extended to the accused person (the applicant) in this stage of investigation. However, this court finds that the location from where the seizure has been made is probably covered by the CCTV camera. As such, the investigating officer shall within 15 days from today take out the footage of the CCTV camera for the period when the seizure was carried out and copy such footage and bring out prints of relevant moments. Those viz(1) CCTV footage and (2) the prints thereof be produced before the court of the Special Judge (under NDPS Act), West Tripura, Agartala. The applicant may renew his prayer for bail in the court of the Special Judge (under NDPS Act). After perusing the report of the CCTV footage and other materials, the Special Judge may consider the bail application afesh, without being influenced by this order.

A copy of this order be supplied to Mr. R. Datta, learned PP for onward transmission. The report dated 18.11.2020 as filed by the Investigating Officer is kept in the records.

Case Dairy as produced be returned forthwith to Mr. R.Datta, learned PP.

JUDGE

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