



GAHC010094592021

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

Case No. : AB/1701/2021

AMAL DAS
S/O SRI NIBARAN CHANDRA DAS
RESIDENT OF MAA APARTMENT, NARENGI, PO NARENGI, PS NOONMATI,
GUWAHATI 26, DIST KAMRUPM ASSAM

VERSUS

THE STATE OF ASSAM
REPRESENTED BY PP ASSAM

Advocate for the Petitioner : MR. A M BORA

Advocate for the Respondent : PP, ASSAM

B E F O R E

HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

Date of hearing : **29.04.2022**

Date of Judgment : **06.05.2022**

JUDGMENT & ORDER

Heard Shri DK Baidya, learned counsel for the petitioner, namely, Amal Das, who has



filed this application under Section 438 CrPC seeking pre-arrest bail in connection with Basistha PS Case No. 1023/2020 registered under Section 21(c) / 29 of NDPS Act, 1985. Also heard Shri BB Gogoi, learned Additional Public Prosecutor, Assam.

2. The projected case of the petitioner is that the allegations in the FIR are incorrect though it is a fact that a Truck was intercepted near Jorabat and in the search, Eskuf cough syrup in 44,160 nos. of bottles in 276 nos. of cartoons were recovered without any documents. The projected case of the petitioner is that the psychotropic substance seized was sold by the agency run by the petitioner to a distributor of Karimganj district. The further case of the petitioner is that one Anirudh Kumar Singh was running M/s. Hematech Pharmaceuticals at Narangi. The said Anirudh Kumar Singh had requested the present petitioner, who was running another drug distributorship in the name of ANM Pharmaceuticals to run his distributorship and accordingly executed a Power of Attorney dated 21.01.2021 in favour of the petitioner on the strength of which, the petitioner is running the business of M/s. Hematech Pharmaceuticals. It has also been contented that the consignment in question was purchased from one Daffodil Drugs Private Limited, Kolkata and was accordingly supplied to M/s. Nalini Drugs Distributor by issuing cash memo and E-way bill. It is however apparent that the GST invoice was of a subsequent date than the date of seizure.

3. This Court, vide order dated 07.07.2021, after going through the Case Diary had noticed that there was an issue as to whether the GST invoices are manufactured or genuine and accordingly, directed the Investigating Officer to file a report. However, in the meantime, an interim order was granted in favour of the petitioner.

4. After certain dates, the report was furnished to this Court. This Court vide order dated 05.04.2022 after perusal of the CD had, amongst others, made the following observations-

“4. As per the aforesaid order requiring the IO to submit a report of the GST invoices, it appears that the IO had written a letter dated 21.03.2022. In reply to the said letter, the office of the Deputy Commissioner of State Tax-cum-Assistant Commissioner of Tax, Unit-C had given a reply dated 28.03.2022 from which it appears that the e-Way bill for the goods, in question, were generated on 10.06.2021 at 11.38 am whereas, the vehicle (Truck) with Registration No. NL-01-AB-9942 carrying the contrabands was intercepted



on 09.06.2021 at 10.10 pm when no relevant documents could be produced regarding the goods. Another issue had appeared regarding the existence of M/S Nalini Drugs Distributors, Karimganj which was the destination of the goods. To substantiate the claim of the applicant regarding the authenticity of such existence, an RTI reply dated 25.11.2021 has been placed on record. The following queries were made in the said application:

- i) Whether any drug license has been issued to M/S Nalini Drug Distributor, Karimganj from your office?
- ii) If license issued, the number of the Drug license?
- iii) Proprietor of M/S Nalini Drug Distributor, Karimganj?
- iv) Whether Sumit Dhar is running the license on behalf of its proprietor from the basis of power of attorney/authority letter?

5. The reply to the same was in the following manner:

- 1) Yes
- 2) D/OL/KMJ/3837 & 3838 DTD 07/11/2019
- 3) Anup Kanti Ghosh
- 4) No.

6. The Case Diary contains another communication from the Inspector of Drugs, HQ, Office of the Drugs Controller, Assam, Hengrabari, dated 27.10.2021 wherein the following has been mentioned:

1. The proprietor of M/S Nalini Drugs Distributor Sh. Anip Kanti Ghosh has declared that he has not ordered the subject drug and has not signed in the order copy (copy enclosed) and his D/L No. is D/OL/KMJ/3837 & D/OL/KMJ/3838.
2. As per report of the Inspector of Drugs, Kamrup and Sr. Inspector of Drugs, Kamrup it is to be noted that the invoices of M/s. Hematech Pharmaceuticals,

CK Azad Road, Panbazar, Guwahati issued to M/s. Nalini Distributors C/o. Dhar Drug Agency, Shivbari Road, Karki with D/L/No.KM3/3837 & 3838 does not exists as per office record.

3. The details of the firm M/S Nalini Drug Distributor is recorded as M/S. Nalini Drug Distributor, Shivbari Road, P.O. & Dist: Karimganj with No. D/OL/KMJ/ 3837 & 3838, dtd. 07.11.2019

7. It appears that there is a major contradiction with the contents of the aforesaid communication dated 27.10.2021 of the Inspector of Drugs, HQ, Office of the Drugs Controller, Assam and the reply to the RTI application dated 25.11.2021. Though the reply to the RTI is on certain queries which will not directly on the issue, the contents of the two communications of the authorities do not appear to be in conformity with each other.

8. Shri Bora, learned Senior Counsel submits that subsequent generation of bill can, at best, be violation of the GST Act but cannot be termed to be a violation of the provision of the NDPS Act and therefore, Section 21 of the NDPS Act may not be applicable. The learned Senior Counsel further submits that though the seized articles in question may be termed as psychotropic substance, it will come under the exception of Section 8(c) and transportation of the same with necessary documents is available under proviso to Rule 67(4).

9. Shri Bora, learned Senior Counsel also draws the attention of this Court to the bill issued by Nalini Drug Distributors (page 46), dated 08.06.2021 and the GST invoice (page 97), dated 09.06.2021.

10. A careful perusal of both the documents would show that whereas the bill at page 46 has been issued by "Nalini Drug Distributors", at page 97, the buyer's details have been stated as Nalini Distributors. Further, the address at page 46 is shown as Shib Bari Road, Karimganj, in page 97, it is shown as C/O Dhar Drug Agency Shibbari Road. Furthermore, the distributor's license at page 46 is shown as D/L NoKMJ/3837/3838, in page 97, it is DL No. : KM3/3837/3838 and the rubber stamp at page 46 also gives the address as Sub Bari Road, Karimganj. Lastly, a perusal at page 46 of the document

would clearly show that the same was a blank document which has been filled up by hand by inserting the details only for the purpose of annexing the said documents in the bail application, inasmuch, as it is by the same hand and ink (Annexure F) has been written. In the said document, the space for writing the amount has also been kept blank.

11. All the aforesaid anomalies raise a serious doubt on the manner by which this Court has been approached and it prima facie appears that at various stages, there have been manipulations of documents and other materials.

12. In that view of the matter and for the greater interest of the society and taking into consideration the amount of contrabands seized, namely, 1 Truck load of Eskuf cough syrup consisting of 44,160 bottles in 276 cartons with each cartons containing 160 bottles without any valid documents, this Court directs the IO to make further investigation, including a visit to the Karimganj to verify the existence or otherwise of the consignee/receiver at Karimganj and submit a report by the next date.

13. An enquiry may also be made by the IO on the various documents/emails relating to the applicant and other persons connected with this case and a verification exercise be done with the authorities who have allegedly issued such communications/ documents. In this regard, the IO may also call the applicant for further interrogation by maintaining the interim order."

5. When the matter was considered on the date of hearing, the updated Case Diary was produced which contains the statements of Shri Arup Kanti Ghosh, the proprietor of M/s. Nalini Drugs Distributor along with the note of the IO, who had visited the location. The proprietor has specifically stated that no consignment of the present nature was ever made and all medicines for the Pharmacy are collected from local Stockist and on no occasion any medicines were procured from beyond the Barrack Valley. The proprietor has also suspected some foul-play regarding the license.

6. Shri Baidya, the learned counsel for the petitioner has submitted that after the interim order dated 06.07.2021, the petitioner had appeared before the IO on 15.07.2021 and there is no instance of any misuse. As regards the materials revealed in the updated Case Diary

including the statement of Shri Arup Kanti Ghosh, the learned counsel has submitted that, perhaps to avoid any complicity, the proprietor has simply tried to wriggle out of the matter. He further submits that the petitioner cannot be held liable of misuse of the license of M/s. Nalini Drugs Distributor.

7. On the other hand, Shri BB Gogoi, learned Additional Public Prosecutor, Assam has submitted that from the very initiation of movement of the consignment involving a huge number of bottles in cartoons which admittedly is a psychotropic substance under the NDPS Act as the cough syrup contains a substance called Codeine, there are anomalies / illegalities at different stages including GST invoices and therefore, the present may not be a fit case to continue with the interim protection granted to the petitioner.

8. The submissions made by the rival parties have been carefully considered and the case records perused. It appears that the thrust of the argument made on behalf of the petitioner in support of the prayer for bail is that subsequent generation of bills can at best be violation of the GST Act and cannot be violation of the NDPS Act. It is further been contended that though the articles are psychotropic substance it will come under the exception of Section 8(c) of the Act and transportation of the same with necessary documents is available under proviso to Rule 67(4) of the NDPS Rules.

9. After hearing the parties and on perusal of the materials on record, this Court finds sufficient force in the argument made on behalf of the State. It is already on record that the E-way bills were generated on 10.06.2021 at 11.38 AM whereas the Truck with registration No. NL-01-AB-9942 carrying the contraband was intercepted on the previous day i.e. 09.06.2021 at 10.10 PM when no documents could be produced. The discrepancies regarding the consignment being allegedly meant for M/s. Nalini Drugs Distributors, instead of being resolved has in fact raised the degree of suspicion on the *bona fide* of the projected case of the accused. The license no. of M/s. Nalini Drugs Distributor also seems to be interpolated as recorded by this Court in the order dated 05.04.2022. The communication dated 27.10.2021 issued by the Inspector of Drugs, Headquarter specifically states that the invoices of M/s. Hematech Pharmaceuticals do not exist as per office records. Interestingly, the invoices are not issued to M/s. Nalini Drugs Distributors but to M/s. Nalini Distributors with D/L No.

KM3/3837 and 3838 which does not exist.

10. On the first blush, the contention made on behalf of the petitioner appears to be acceptable. However, on the revelations made during the investigation, the matter has turned up to be a very serious one which calls for a thorough and meticulous enquiry.

11. The offence involved in this case is one under the NDPS Act and the quantity involved is a commercial quantity. The contraband involved is also chemical manufacture drugs. To be more specific, the FIR itself reveals that the following recovery has been made-

Description of Seizure :

- i. One truck bearing Reg. No. NL-01-AB-9942
- ii. Total 44,160 bottles of cough syrup Eskuf (Codeine Phosphate & Chlorpheniramine Malite syrup) 100 ml. Batch No. LESC-077 Mfg. dtd. 03-2021, Expr. Dt. 02-2013 in 276 cartons, each carton contains 160 bottles suspected to be NDPS (Narcotic Drugs and Psychotropic Substance).
- iii. Cash Rs.20,000/-
- iv. One ID Card in the name of Amal Das of ANM Pharmaceuticals, MT Road, Forest Gate, Narengi, Ghy.
- v. One mobile handset.

12. This Court finds force in the submission of the learned APP, Assam that offences under the NDPS Act are part of an organized crime wherein difference roles are played by different accused persons. Therefore, recovery or seizure cannot be held to be a *sine qua non* for the arrest / detention or even for conviction if there are other convincing and corroborating materials which in the present case are abundantly available.

13. This Court is of the view that it is a settled position of law that in a case involving the NDPS Act various factors are to be taken into consideration like the quantity of the contraband, nature of the substance, nature of involvement etc. In the present case, the contraband is a commercial quantity and the substance is chemically manufactured drug. Moreover, Section 37 of the NDPS Act lays down that before granting a bail, the relevant



factors are that the Court should come to a satisfaction that *prima facie* the petitioner is not guilty of the offence and also the petitioner has to satisfy the Court that in case bail is granted, he is not likely to commit further offence. The aforesaid two factors do not seem to be fulfilled in the present case.

14. In that view of the matter and also taking into consideration the very object of the enactment, namely to curb the menace of drugs and its ill effects on the society which has the propensity to destroy the generation as a whole, this Court is of the opinion that no case for grant of anticipatory bail is made out. Accordingly, the same stands rejected. Consequently, the interim protection granted, vide order dated 07.07.2021 stands cancelled.

15. The IO of the case is accordingly directed to make all efforts to investigate the case so that the persons involved in the heinous offence involved in the NDPS Act can be put to book, strictly in accordance with law.

16. It is however clarified that the observation made are tentative in nature and shall not cause prejudice to either of the parties in the trial.

JUDGE

Comparing Assistant