

Special NDPS Case No. 12/2022

Order No. 9
Dated 12.10.2022

Accused Chewang Tenzing Bhutia is produced from Jail custody.

Today is the date fixed for hearing bail application filed by the accused Chewang Tenzing Bhutia.

Heard the bail application filed by the accused Chewang Tenzing Bhutia praying for releasing him on bail in presence of Ld. advocate for the accused person and Ld. Special P.P.

Seen the bail application, perused the C.D. and other materials on record.

It is submitted by the Ld. advocate for the accused person that this accused Chewang Tenzing Bhutia was brought under arrest on 08.08.2022 and since then he is in jail custody. The Ld. advocate for the accused also relies upon the Order dated 06.09.2022

and 25.06.2021 of Bail application No. 1136/2021 passed by the Hon'ble Delhi High Court as well as the Judgment of Hon'ble Jammu & Kashmir High Court passed in Deepak Gupta and Ors. Vs. U.T. of J&K and Anr. and submits that there is a mini scale amount of codeine in syrup and this drugs is also the manufactured drugs as such the accused person may be released on bail.

Ld. Special P.P. submits before this court that the seized contraband articles and Narcotic drugs which were recovered from the possession of the accused are also of commercial quantity as such his bail prayer may kindly be rejected.

Having heard the submission of Ld. advocate for the accused person and the Ld. Special P.P., perused the C.D. and other materials on case record, I find that one S.I. Deepak Thapa, O/C of Melli O.P., Kalimpong P.S. lodged the complaint before the I.C., Kalimpong P.S. alleging inter alia that on getting a secret information from the reliable source that one Maruti Car bearing Reg. No. SK-01T-9926 was coming from Siliguri and proceeding towards Sikkim carrying some contraband drugs and psychotropic substances. Then he along with other officers and force stopped the driver of the car at Labarbottay on NH-10 in front of Old Commercial Tax Building and he along with other officer also approached the driver of the car and on being questioned the driver disclosed himself as Chewang Tenzing Bhutia. He was carrying and transporting some contraband drugs and psychotropic substances and thereafter they seized the vehicle bearing Reg. No. SK-01T-9926 and on being searched the body of the detained driver Chewang Tenzing Bhutia 56 bottles of Chlopheniramine Maleate and Codeine Phosphate Syrup styled as Altorex-CD each bottle containing 100ml syrups, 34 strips of "Winspasmo Forte" each strip containing 8 capsules and 10 strips of "Nitrosun-10 Tablets each strip containing 10 tablets were found kept in a blue and white printed cotton seat cover kept concealed behind the driver seat of Maruti Suzuki Alto 800 car bearing Reg. No. SK-01T/9926 were recovered from his possession. On being demand the driver Chewang Tenzing Bhutia failed to produce any receipt/invoice/doctor's prescription/license in support of the possession of such huge number of contraband drugs "Winspasmo Forte capsules".

I perused the C.D. and other materials on record where from I find that 56 numbers of bottles of Chlopheniramine Maleate and Codeine Phosphate Syrup, styled as Altorex-CD, 34 strips of "Winspasmo Forte" each strip containing 8 capsules and 10 strips of "Nitrosun-10 each strip containing

10 tablets were recovered from the possession of the accused Chewang Tenzing Bhutia. He also failed to show any document/prescription for justifying the possession of huge number of Narcotic Drugs and Psychotropic Substances.

This Court relies upon the Judgment reported in 2020 Hira Singh Vs. Union of India, (2020) 20 SCC 272 wherein the Hon'ble Supreme Court of India, having been considered the notification bearing No. S.O. 2941(E) dated 18.11.2009, adding "Note 4" to the notification bearing No. S.O. 1055(E) dated 19.10.2001 was pleased to hold that irrespective of quantity of narcotic drug and psychotropic substance in the mixture, the quantity of entire substance would be considered for the purposes of ascertaining whether it is a commercial quantity, intermediate quantity or small quantity. So far as this accused is concerned that 56 number of bottles of Chlopheniramine Maleate and Codeine Phosphate Syrup, styled as Altorex-CD each bottle containing 100 ml totaling 5600ml of Chlopheniramine Maleate and Codeine Phosphate was recovered from the possession of the accused Chewang Tenzing Bhutia. Apart from that 34 strips of "Winspasmo Forte" each strip containing 8 capsules totaling 272 capsules and 10 strips of Nitrosun-10 tablets each tablets containing 10 tablets totaling 100 capsules were recovered from the possession of the accused Chewang Tenzing Bhutia which are of commercial quantity.

The accused is found to be detained in judicial custody for a period of 56 days. Considering the recovery of huge amount of narcotic drugs and contraband articles as well as the period of detention of the accused person, I am not inclined to release the accused on bail.

Accordingly, the prayer of bail of the accused Chewang Tenzing Bhutia is considered and rejected.

C.D. produced today be returned to the Ld. Special P.P. at once.

Fix **25.10.2022** for production of the accused person from J/C and I.O's report in final form.

D&C by me

Sd/-

Judge, Special Court (NDPS)

Kalimpong

Sd/-

Judge, Special Court (NDPS)

Kalimpong