

CIS No. NDPS 170/2021

In the Court of the Judge (Special Court) under NDPS Act, Siliguri

CR (NDPS) Case No. 170 of 2021

Order no. 07

Dated 31/01/2022

Accused persons are not produced before this Court room to avoid overcrowding.

A bail petition is filed and moved on behalf of the accused Nabin Roy with V.nama. Copy served.

The Ld. Advocate submits that the accused person has been falsely implicated in this case. He further submits that referring observation of the Hon'ble Supreme Court in case of Hira Singh and Another vs. Union of India and Another, the Hon'ble Delhi High Court in 1. Md. Ahesan vs. Customs 2. Iqbal Singh vs. State and the Hon'ble Himachal Pradesh High Court, have pleased to hold that actual quantity of the contraband mentioned in the Notification specifying small and commercial quantity annexed in the NDPS Act, should be separated from the neutral substance and as per this case if actual codeine is summed up than the quantity is less than commercial. He further submits that there is conflict between NDPS Act and Drugs and Cosmetics Act as codeine has been mentioned in both the Acts. He prays for bail.

Ld. Special PP-in-charge raises objection, referring observation of the Hon'ble Supreme Court in case of Hira Singh and Another vs. Union of India and Another.

Heard both sides.

Perused the bail petition and the case record.

I do not find any logic in the submission of the Ld. Lawyer that codeine is mentioned in both the NDPS Act and Drugs and Cosmetics Act, leading to conflict between the two. As per Note 4 of Notification (Table) specifying small quantity and commercial quantity in NDPS Act, the quantity shown in column 5 and column 6 of the Table relating to the respective drugs shown in col. 2 shall apply to the entire mixture or any solution or any one or more Narcotic Drugs or Psychotropic Substances of that particular drug in dosage or isomers, esters, ethers, and salt of this drugs, including salt of these esters, ethers and isomers, whenever existence of such substance is possible and not just its a pure drug content. The Hon'ble Supreme Court in case of Hira Singh and Another vs. Union of India and Another, has reiterated this provisions in its observation.

In view of the afore, it is not proper for the Ld. Lawyer for the accused to claim that the contraband is not commercial quantity.

It appears that prima facie commercial quantity of contraband, prohibited under NDPS Act, or in contravention of NDPS Act, has been seized from the accused person and the investigation is in progress. Granting of bail with regard to commercial quantity is barred under section 37 of the NDPS Act. Considering this, gravity of the offence alleged, entire facts and circumstances of this case and nature and quantity of contraband seized, the bail petition stands rejected.

The case is adjourned.

To 14.02.2022 for production and IO's report.

D/c by me

Sd/-

Judge, Special Court
NDPS Act, Siliguri

Sd/-

Judge, Special Court
NDPS Act, Siliguri
WB00683