**SYNOPSIS AND LIST OF DATES**

The present Special Leave Petition is preferred against the impugned judgment/order dated 20.08.20\_\_ in Criminal Appeal No. \_\_ of 20\_\_ passed by the High Court of Sikkim, whereby the Hon'ble High Court dismissed an appeal against the order of conviction & sentence dated 19.12.20\_\_ passed by the Learned Special Judge, Sikkim Anti-Drugs Act (S.A.D.A). The SADA Court, on the basis of inconclusive and inconsistent statements of the prosecution witnesses (most of whom were police officers) regarding the recovery of some contraband articles in a vehicle which the petitioner was allegedly driving, convicted him for transportation of prescription drugs/contraband articles and sentenced him for four years imprisonment and a fine of Rs. 1 lakh.

**Brief Facts of the Case**

The petitioner herein was a car-driver aged \_\_ years. According to the Police, on 28.10.20\_\_, one Respondent No. 2 along with the Petitioner were entering the State of Sikkim from West Bengal side, wherein their car was searched and capsules & cough syrup bottles were recovered from the car. The two accused were arrested. Subsequently, the police obtained a report from a forensic laboratory which stated that the capsules and cough syrup contain certain chemicals, which the prosecution then claimed to be prohibited under SADA.

The Ld. Special Judge as well as the Hon'ble High Court of Sikkim erroneously placed reliance on the statements of some prosecution witnesses, while ignoring the others. The Ld. Judge also erroneously overlooked glaring inconsistencies in the witness statements, some of which are as follows:

28.10.20\_\_ According to the Police, the present petitioner was proceeding towards Melli, South Sikkim in a vehicle bearing registration number \_\_\_\_ from West Bengal. He was the driver of the said vehicle. The vehicle was checked at the Melli Check Post and some contraband articles were recovered. Thereafter, FIR No: \_\_\_\_\_, Dated: \_\_\_\_\_, under Section (s) 9 and 14 of Sikkim Anti Drugs Act (SADA), 2006 was registered against the Petitioner and Respondent No.2 herein. A copy of the FIR dated

28.10.2013 is annexed as Annexure P1 (pages \_\_\_\_\_\_ to \_\_\_\_\_\_).

28.10.20\_\_According to the Police, the some contraband articles were seized from the vehicle being driven by the petitioner at 12:00 PM on 28.10.20\_\_. The Property Seizure memo of Petitioner here in states that the property seized from the Petitioner comprised 20 bottles of cough syrup Lupicof along with the vehicle bearing registration no. \_\_\_\_\_, RC Book, Insurance Papers and Pollution Check papers. A copy of the property seizure memo dated 28.10.20\_\_ in the name of the Petitioner herein is annexed as Annexure P2 (pages \_\_\_\_\_\_\_ to \_\_\_\_\_\_\_). The Property Seizure memo of the Respondent No.2 comprised \_\_ bottles of cough syrup lupicof, \_\_ capsules of Spasmo proxyvon. A copy of the property seizure memo dated 28.10.20\_\_ in the name of the Respondent No. 2 herein is annexed as Annexure P3 (pages \_\_\_\_\_\_\_ to \_\_\_\_\_\_\_).

29.10.20\_\_ The petitioner herein paid the requisite fees for his medical treatment at Sikkim Rehabilitation & Detoxification Centre, Nimtar, East Sikkim, a government approved centre for de-addiction. The petitioner filed a bail petition for his release so that he could get admitted at a government approved de-addiction centre for undergoing medical treatment for de-addiction.

19.12.20\_\_ The Court of Special Judge (SADA) South Sikkim vide its final judgment dated 19.12.20\_\_ convicted the petitioner and the respondent no. 2 herein of the offences under Section 9(d) of SADA, 2006 read with Section 34 of the IPC 1860 and Rule 17(1) of the SADA Rules, 2007 read with Section 14 of SADA 2006 and Section 34 of IPC 1860. A copy of the judgment of trial court convicting the petitioner dated 19.12.20\_\_ is annexed as Annexure P17 (pages\_\_\_\_\_ to \_\_\_\_\_).

17.02.20\_\_ The petitioner herein filed Criminal Appeal No. 03/20\_\_ at the High Court of Sikkim at Gangtok. A copy of the criminal appeal filed by the petitioner is annexed as Annexure P19 (pages\_\_\_\_\_ to \_\_\_\_\_).

19.03.20\_\_ The Hon'ble High Court was pleased to suspend the sentence of the petitioner and granted him bail during the pendency of the appeal. A copy of the High Court order dated 19.03.20\_\_ granting bail to the petitioner is annexed as Annexure P20 (pages \_\_\_\_\_\_ to \_\_\_\_\_\_\_\_).

20.08.20\_\_ A single judge bench of Hon'ble High Court of Sikkim dismissed the appeal vide final impugned order/judgment dated 20.08.20\_\_ upholding the judgment of the trial (SADA) court.

16.11.20\_\_ In a similar case, the Hon'ble High Court of Sikkim in the case of Nurul Haque v. State of Sikkim acquitted the accused for the offences registered against him under Section 9(d) of SADA and Rule 17(1) of Sikkim Anti Drugs Rules rules on the basis of similar anomalies in the statements of witnesses and because the mandatory provision of Section 24 SADA (Section 50 of NDPS Act) was not followed. A copy of the said final order/judgment dated 16.11.2015 of the Hon'ble High court of Sikkim in Criminal Appeal No. 13 of 2015 is annexed herewith as Annexure P21 (pages\_\_\_\_\_\_\_ to \_\_\_\_\_\_\_).

.11.20\_\_ Hence the present Special Leave Petition

**IN THE SUPREME COURT OF INDIA**Order XXII Rule 1 (1)
**(CRIMINAL APPELLATE JURISDICTION)**
(UNDER ARTICLE 136 OF THE CONSTITUTION OF INDIA)
**SPECIAL LEAVE PETITION (CRIMINAL) NO. \_\_\_\_\_\_\_ OF 20\_\_**
(Against the final order and judgment passed by the Hon'ble High Court of Sikkim dated 20.08.20\_\_ passed in Criminal Appeal No. \_\_ of 20\_\_)

**IN THE MATTER OF:**

                                          In Trial Court     In High Court            In Supreme Court

ABC                                    Accused No. 1    Petitioner No. 1         Petitioner

Versus

Government of \_\_\_             Prosecution  Respondent No. 1             Respondent No. 1

**SPECIAL LEAVE PETITION UNDER ARTICLE 136 OF THE CONSTITUTION OF INDIA**

To,
The Hon'ble Chief Justice of India and his companion justices.

The Humble petition of the Petitioner above named:

**MOST RESPECTFULLY SHOWETH:**

1. The present Special Leave Petition is preferred against the final judgment/order dated 20.08.20\_\_ in Criminal Appeal No. \_\_ of 20\_\_ passed by the High Court of Sikkim, whereby the Hon'ble High Court has dismissed an appeal against the judgment and Order of Sentence dated 19.12.20\_\_ passed by the Learned Special Judge (S.A.D.A), South Sikkim at Namchi passed in S.T. (S.A.D.A) Case No. 02 of 20\_\_. It is submitted that no intra-court appeal lies against an order passed in a criminal appeal.

**2. QUESTIONS OF LAW:**

The following questions of law arise for consideration by this Hon'ble Court:

A. Whether the petitioner could have been convicted at all under Section 9(d) of SADA in a situation when one of the two independent prosecution witnesses (PW3) had not the supported the prosecution theory and the other (PW4) stated that police directed him to sign the seizure memo without disclosing its contents?

B. Whether the Hon'ble High Court erred in not appreciating the settled law that no conviction can be based on the statements of police officers if the same fails to inspire confidence, is contradictory or otherwise not fully credible?

C. Whether the High Court erred in not appreciating that there were material discrepancies in the depositions of the prosecution witnesses, most of whom were police officers themselves and hence the prosecution could not prove the guilt of the petitioner beyond reasonable doubt?

D. Whether the statement of PW4 could have been relied upon by the courts below for convicting the petitioner?

E. Whether the Hon'ble High Court erred in not appreciating the fact that the petitioner was working as a driver and the seizure memo in his name only recorded 20 cough syrup bottles?

F. Whether the Hon'ble High Court erred in not differentiating between contraband articles such as opium, charas, ganja, cocaine etc and those of the kind as allegedly seized from the vehicle that the petitioner was driving i.e. prescriptions drugs?

**3. DECLARATION IN TERMS OF RULE 2(2):**

The Petitioner states that no other petition seeking leave to appeal has been filed by them against the order dated 20.08.20\_\_ passed by the passed by the High Court of Sikkim in Criminal Appeal No. 03 of 2015

**4. DECLARATION IN TERMS OF RULE 4:**

The Annexures P-\_\_ to P-\_\_ produced along with the Special Leave Petition are true copies of the pleadings / documents which formed part of the records of the case in the Courts below, against whose order, the leave to appeal is sought for in this petition.

**5. GROUNDS:**

A. That as per the facts in the instant case, the checking at Melli Check Post resulted in the alleged seizure of contraband articles which were gift wrapped and kept in the back of the Bolero vehicle that the petitioner herein was driving. Even assuming the prosecution theory as correct, the alleged seizure does not amount to chance recovery and therefore, the mandatory procedure under Section 21(2) and Section 24(3) of Sikkim Anti Drugs Act, 2006 ought to have been complied with by the Investigating Officer as the Investigating Officer neither sent the report within seventy two hours nor the report was sent to the immediate superior officer. In the instant case even the procedure under Section 30 which was clearly applicable was also not followed. The law is clear that if something has to be done, has to be to done in a particular manner, it has to be done in that manner and not otherwise.

B. In a very similar case, the Hon'ble High Court of Sikkim vide its recent judgment dated 16.11.2015 in the case of Nurul Haque v. State of Sikkim acquitted the accused for the offences registered against him under Section 9(d) of SADA and Rule 17(1) of Sikkim Anti Drugs Rules rules on the basis of similar anomalies in the statements of witnesses and because the mandatory provision of Section 24 SADA (Section 50 of NDPS Act) was not followed.

C. The Petitioner herein has been sentenced to an excessive and disproportionate term of imprisonment of four years despite the fact that he had undergone and completed a full 144-day (almost 5 months) de-addiction and rehabilitation program as per the directions of the Trial Court itself. The petitioner had been granted a certificate of successful completion and was remarked that the petitioner showed good conduct during the entire course of de-addiction.

D. That there is no proof that the petitioner and respondent no. 2 were acting in pursuit of a common intention to commit an offence under Section 9(d) of SADA. The petitioner was the driver of the car while the consignment was seized in the name of the respondent No. 2. Consequently, the seizure memos also differ and show 20 bottled of cough syrup to have been seized from petitioner while 536 bottles and 1440 tablets were seized in the name of respondent No. 2. In the absence of any evident with regard to the common intention, Section 34 of IPC cannot be applied in the instant case.

E. The petitioner is a first-time offender and has undergone extensive medical treatment for de-addiction,. Moreover, at the time of the alleged incident, he was merely a young driver and has been given such a disproportionate and excessive punishment.

F. The Ld. Special Judge as well as the Hon'ble High Court of Sikkim erroneously overlooked glaring inconsistencies in the depositions/testimonies of prosecution witnesses.

**6. GROUNDS FOR INTERIM RELIEF:**

A. That the petitioner, a first time offender, has already spent over six months in prison.

B. That the petitioner has already undergone 144 days of medical treatment for de-addiction, detoxification and rehabilitation.

C. That the petitioner was granted bail during the investigation, during the trial and also while his appeal was being heard by the High Court.

D. The petitioner has fully cooperated with the investigation, trial and has never mis-used the liberty granted by the courts. The petitioner also fully complied with the conditions imposed by the courts while granting him bail.

E. That the balance of convenience is in favour of the petitioner and irreparable injury would be caused to the petitioner if the interim relief is not granted. If the sentence is not suspended, the petitioner would not be able to assist his lawyers and prepare for his appeal before this Hon'ble Court.

F. That no prejudice would be caused to the Respondent if the interim relief is granted.

G. That the petitioner has a good chance in this appeal and is likely to succeed in the matter, therefore, interim relief may be granted to the petitioner. That the hearing of the appeal before this Hon'ble Court may take some time and therefore, the execution of sentence may be suspended during the pendency of the appeal.

**7. MAIN PRAYERS**

In view of the the above circumstances, it is most respectfully prayed that this Hon'ble Court may graciously be pleased to:

a) Grant special leave to appeal against the final judgment and order dated 20.08.20\_\_ in Criminal Appeal No.\_\_ of 20\_\_ titled \_\_ & Anr. V State of Sikkim passed by the single judge of the High Court of Sikkim at Gangtok

b) Pass such other and further orders as this Court may deem fit and proper in the interests of justice.

**8. INTERIM PRAYERS:**

It is most respectfully prayed that this Hon'ble Court may graciously be pleased to pass the following ad interim directions:

a. Stay the impugned final judgment/order dated 20.08.20\_\_ in Criminal Appeal No.\_\_ of 20\_\_ titled \_\_\_ & Anr. V State of Sikkim passed by the single judge of the High Court of Sikkim at Gangtok.

b. Stay the conviction and suspend the execution of the sentence imposed on the petitioner by the Learned Special Judge, Sikkim Anti-Drugs Act (S.A.D.A), South Sikkim, during the pendency of the instant appeal.

c. Pass such other and further orders as this Court may deem fit and proper in the interests of justice

FILED BY:

Advocate for the petitioner

Drawn By:
Drawn on:
Filed on:
New Delhi