

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.72970 of 2018

Arising Out of PS. Case No.-628 Year-2018 Thana- AGAMKUAN District- Patna

Debjit Basu S/o Late Amal Chandra Basu R/o Proprietor of Ashok Transport
Agency, Flat No.401, R.K. Avenue, Vishal Vill-Rajendra Nagar, P.S.
Kadamkuan Distt.-Patna

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Awadhesh Kumar

For the Opposite Party/s : Mr. Dr. Kumar Uday Pratap

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL ORDER

2 19-12-2018

Heard the learned counsel for the parties.

This application for anticipatory bail arises out of Agamkuan P.S. Case No.628 of 2018, disclosing offences under Sections 420, 274, 275, 276/34 of the Indian Penal Code, Sections 27(b) ii, 27(d), 28 and 28(a) of the Drugs and Cosmetics Act, 1940.

Learned counsel for the petitioner has drawn my attention to Division Bench decision of this Court in case of *Shankar Kumar Ghosh vs. State of Bihar & Anr* decided on 21.01.2011 (Cr.WJC No. 719 of 1998 and another analogous cases) to submit that in view of Section 32 of the Drugs and Cosmetics Act, 1940, the F.I.R. for the offences punishable under Sections 27(b)ii/27(d)/28/28(a) of the Drugs and



Cosmetics Act, 1940 could not have been registered. Reliance has also been placed on a decision of this Court reported in **2015(3) PLJR 660 (M/S Torque Pharmaceuticals Pvt. Limited Vs. State of Bihar and ors)**. He has also submitted that the offences under various provisions of the I.P.C. as mentioned in the First Information Report are not made out.

I am *prima facie*, satisfied with the submission advanced on behalf of the petitioner.

Learned Additional Public Prosecutor appearing on behalf of the State has attempted to submit that the petitioner could have applied for quashing of the criminal prosecution but the plea which is being taken cannot be taken for grant of anticipatory bail. The submission made on behalf of the State cannot be accepted. If the Court is of *prima facie* view that the FIR itself is incompetent and there is apprehension of petitioner being arrested in connection with that case, the Court may entertain an application for grant of anticipatory bail. This application is, accordingly, allowed.

Let the petitioner above-named in the event of his arrest/surrender within six weeks from today in the court below, be released on bail on furnishing bail bonds of Rs. 10,000/-(ten thousand) with two sureties of the like amount each to the



satisfaction of the learned Additional Chief Judicial Magistrate, Patna City in Agamkuan P.S. Case No.628 of 2018, subject to the conditions as laid down under Section 438(2) of the Code of Criminal Procedure.

This is subject to the condition that the petitioner shall present himself before the Police/Court, as the case may be, as and when required and in the event of failure on his part to appear before the Court on two consecutive occasions, his bail bonds shall be liable to be cancelled.

(Chakradhari Sharan Singh, J)

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