HIGH COURT OF TRIPURA
AGARTALA

A.B. No.136/2020

B E F O R E

HON'BLE MR. JUSTICE S.G CHATTOPADHYAY

Shri Nipesh Sarkar .....Applicant(s)

Versus

The State of Tripura .....Respondent(s)

For the Applicant(s) : Mr. I.Bhowmik, Adv.

For the Respondent(s) : Mr. Ratan Datta, PP.

O R D E R

22.12.2020

[**1**] This is an application under Section 438 of the Code of Criminal Procedure (Cr.P.C, in short) for granting pre-arrest bail to the petitioner namely Shri Nipesh Sarkar in East Agartala P.S. case No.59 of 2020 under Sections 21(c) and 29 read with Section 8 of the Narcotic Drugs and Psychotropic Substances Act, 1985(NDPS Act, in short).

[**2**] The brief facts are as under:

Shri Arindam Roy, Sub-Inspector of Police of College tilla police out post, acting on an information

received from a secret source, intercepted vehicle bearing no. TR-01-N-1556(TATA ACE) on 08.04.2020 at 8.30 A.M when the vehicle was proceeding from the side of Aralia to Srinagar. The vehicle was detained and brought to the police station where search operation was carried out and **7262 nos. Codeine Phosphate & Chlorpheniramine Maleate ESKUF Cough Syrup** in 44 cartoons were seized from the vehicle. Before the vehicle was detained by police, the driver having noticed the police team stopped the vehicle, managed to flee away. After the seizure of the contraband from the vehicle, Shri Arindam Roy, Sub-Inspector of police lodged a written FIR with the Officer—n-charge of East Agartala police station.

[**3**] Based on his FIR East P.S. case Number 2020 EAG 059 under Sections 21(c) and 29 read with Section 8 of NDPS Act was registered and investigation was taken up. During investigation, the driver of the vehicle was arrested by police and he was taken into police remand. During his interrogation, the name of the petitioner transpired and police conducted raid in his house for arresting him. Hence,

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this application under Section 438, Cr.P.C by the petitioner for releasing him on pre-arrest bail.

[**4**] Heard Mr. I.Bhowmik, learned counsel appearing for the petitioner.

Heard Mr. Ratan Datta, leaned Public Prosecutor appearing for the State Respondent.

[**5**] It is submitted by Mr.Bhowmik, learned counsel of the petitioner that the petitioner is a farmer and he does not have any connection with the alleged offence. Further submission on behalf of the petitioner is that he was neither spotted by police to have been carrying any contraband nor any such contraband was seized and recovered from his possession at any point of time subsequent thereto. In these circumstances, suspicion against him is unfounded and therefore, he needs protection from arrest. Learned counsel, therefore, urges the court for releasing him on pre-arrest bail.

[**6**] Mr.R.Datta, learned Public Prosecutor on the other hand submits that the petitioner is the owner of the vehicle from which the contraband was recovered and seized

by police. It is also contended by learned PP that the driver was acting under his instruction while the contraband was recovered. It is further argued that the petitioner is a drug paddler and police needs the petitioner in custody for thorough investigation of the crime to book the members of the racket engaged in this crime. According to learned counsel, earlier to filing of this application, the petitioner filed several applications seeking anticipatory bail before the Special Judge as well as in the High Court, all of which have been rejected. Learned counsel, therefore, urges the court for rejection of the petition.

[**7**] The quantity of the contraband is undoubtedly commercial quantity and in view of the materials available on record and the submissions advanced by learned counsel of the parties, involvement of the petitioner in the alleged offence cannot be ruled out. The main considerations before the court for deciding a bail application of this kind are the nature of the crime, severity of its punishment, the likelihood of the petitioner tempering with evidences, possibility of his absconding from the jurisdiction of the court and availability of prima facie materials supporting the

accusation against him. Apparently the petitioner has been able to evade police arrest for quite a long period of time even after his repeated applications under Section 438 Cr.P.C were rejected by courts. Looking into all these aspects, this court is of the view that this is not a fit case for exercising power under Section 438 Cr.P.C.

Resultantly, the bail application of the petitioner stands rejected and the case is disposed of.

JUDGE

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Saikat Sarma