

**CRM 8599 of 2020
(Via Video Conference)**

In Re: - An application for anticipatory bail under Section 438 of the Code of Criminal Procedure in connection with Suti P.S. Case No.117 of 2020 dated 02.03.2020 under Sections 21(C)/29 of the NDPS Act.

And

In the matter of: **Dikson Sk @ Nikson @ Diksen Sk**

.... Petitioner

Mr. Anisur Rahman

... For the Petitioner

Mr. Binay Kumar Panda

Ms. Puspita Saha

... For the State

The petitioner undertakes to affirm and stamp the petition as per the Rules within one week of resumption of normal functioning of the court. The petition is taken up through video conference on the basis of such undertaking.

The petitioner claims that the petitioner has no connection with the transaction and he has been needlessly pursued despite no contraband being recovered from his possession.

The State says that there are independent witness statements to the effect that the petitioner is associated with the persons arrested with commercial quantity of contraband in their possession. Copies of such statements have been made over to the Court.

It appears that independent persons who were called to witness the seizure have recorded that the persons arrested named this petitioner as one of their associates. There is, however, no independent material that the State produces against this petitioner.

It is also not as if this petitioner was said to be present at the place of seizure and fled away upon getting wind of the raiding party.

Ordinarily, unless commercial quantity of contraband is obtained from the possession of a person, the strict rules under the Act of 1985 would not apply. There are certain exceptions. For instance, a person who flees the place of seizure at the time that a raid is conducted must be seen to be in joint possession of the contraband recovered. There are cases where persons who are arrested apparently indicate other persons being involved in the trade or the transaction. This may be used by the investigating agency to pursue such persons named; but unless independent material is obtained against such named persons, the mere statement of the person arrested may not be good enough to weigh with the court in considering a plea for bail as the strict rule of Section 37 of the Act of 1985 would not be attracted.

There is no doubt that the investigating agency, whether accidentally or deliberately, get hold of the mules and the masterminds are left untouched. There is also no doubt that some of these mules name the masterminds. However, unless the investigating agency produces some independent material against the persons named, it would be dangerous to allow the named persons to be incarcerated since there is no stopping the investigating agency from planting the name of any person as having been named by an arrested person.

Since the State cannot produce any independent material in this case against the petitioner other than the uncorroborated statement

of a person arrested in the case with commercial quantity of contraband, the petitioner is entitled to anticipatory bail.

In the event of arrest, the petitioner will be enlarged on bail upon furnishing security of Rs.10,000/- (Rupees Ten Thousand only), with two sureties of like amount each, one of whom must be local, to the satisfaction of the arresting officer. The petitioner will also abide by the conditions laid down in Section 438(2) of the Code.

CRM 8599 of 2020 is disposed of.

(Sanjib Banerjee, J.)

(Aniruddha Roy, J.)