

24.03.2021.
79.
as
(Rejected)

C.R.M. 1106 of 2021

In Re:- An application for anticipatory bail under Section 438 of the Code of Criminal Procedure in connection with Memari Police Station Case No.416 of 2020 dated 12.09.2020 under Section 20(b)(ii)(C) of the N. D. P. S. Act.

In the matter of :Nurul Islam Sk. @ Islam.
.... Petitioner.

Mr. Uday Sankar Chattopadhyay,
Ms. Snigdha Saha,
Mr. Santanu Majhi.
...for the Petitioner.

Mr. Rana Mukherjee,
Ms. Sujata Das.
...for the State.

The Advocate-on-record of the petitioner undertakes to affirm and stamp the petition/application as per the Rules within four weeks from date. Subject to such undertaking, the application is taken up for hearing.

Apprehending arrest in connection with Memari Police Station Case No.416 of 2020 dated 12.09.2020 under Section 20(b)(ii)(C) of the N. D. P. S. Act, the petitioner has filed the instant application for anticipatory bail.

A plea has been taken by the petitioner that the four seizure lists which are annexed to the instant application pertain to different place of occurrence on different dates though the same has been recorded (singularly) in Memari P.S.

Case No.416 of 2020 which is *per se* illegal and contrary to the provision of law. The second plea which has been projected before us is founded on the parity to be shown to the present petitioner as one of the co-accused viz., Debanand Sahani @ Raja had been granted bail by this Court on 15th February, 2021 in C.R.M.11119 of 2020. It is thus submitted that the seizure lists would depict the recovery of the contraband below the commercial quantity and, therefore, the Court may exercise the discretion in a similar fashion that of the other co-accused who had been enlarged on bail.

The learned Advocate appearing for the State opposes the prayer for bail and hands over the copy of the Case Diary and invited us to peruse the material documents annexed thereto to ascertain the truth and genesis of the case initiated by the prosecution.

Undoubtedly, the case ensued on the basis of the recovery of the contraband from the persons who are named in the seizure list prepared on the date of occurrence. One of the prime accused namely, Ram Prasad Patra was apprehended and interrogated by the investigating officers who disclosed and divulged procurement of the contraband and passing of the same to various persons. He volunteers to disclose such persons and on the basis of the same, further seizures were made and contrabands were also recovered from such persons in pursuit of investigation. Naturally, it attracts Section 29 of the N. D. P. S. Act and we do not find any fetter on the part of

the prosecution in preparing the seizure list on the date of the seizures conducted on the information having been disclosed by a prime accused and for such reason, the dates of the seizure as well as the place of seizure shall naturally vary. The segregation of different seizure having been made on such information should not be allowed as it has some linkage with the seizure of the contraband at the time of first interception which is admittedly the commercial quantity.

A judgement which is ex-facie bad on the perspective of the facts having wrongly projected or recorded cannot bind the Co-ordinate Bench. The point which is canvassed before us does not appear to have been an integral part of the submissions advanced in a bail application filed by Debananda Sahani @ Raja or Sk. Jamshed (C.R.M.42 of 2021 dated 6.1.2021) and, therefore, as a Co-ordinate Bench, we are not bound by such judgment. Though the comity and amity is the hallmark of the judicial discipline, yet it is not a rigid rule but has a laxivity of being departed provided the Co-ordinate Bench finds the facts recorded in the earlier judgment is not re-production of the actual facts discern from the record. Even though the recovery from the petitioner is shown below the commercial quantity but the same is to be treated as joint possession of the total contraband recovered during the investigation and, therefore, the restriction imposed under Section 37 of the N. D. P. S. Act cannot be whittled down or rendered otiose.

Accordingly, the prayer for anticipatory bail of the petitioner is rejected.

(Harish Tandon , J.)

(Tirthankar Ghosh, J.)