

DL. May 19,
28. 2021

Through Video Conference

C.R.M. 1153 of 2021

In the matter of : An application for anticipatory bail under Section 438 of the Code of Criminal Procedure filed on January 28, 2021 in connection with Special Case No. 34 of 2016 dated January 20, 2016 under Section 18(c) read with Section 8(b) of the Narcotic Drugs and Psychotropic Substances Act, 1985;

And

In the matter of : Baidhynath Karmakar & ors. ...petitioners.

Versus

State of West Bengal & anr. ...opposite parties.

Mr. Kalidas Saha,
...for the petitioners.

Mr. Saibal Bapuli,
Mr. Soumik Ganguli,
...for the State.

We have heard the learned advocates appearing for the parties and perused the case diary.

The learned advocate appearing on behalf of the petitioners submits that during the pendency of the proceeding, the petitioner no. 2 was arrested and was granted regular bail by the trial court.

In view thereof, the prayer for anticipatory bail of the petitioner no. 2 is not pressed.

The learned advocate for the petitioners submits that the petitioners no. 1 and 3 have been falsely implicated in the instant case as the materials on record do not show that any illegal cultivation of poppy plants have taken place on the lands in their possession and proper procedure for seizure of opium poppy seeds has been followed by the authorities concerned.

The learned advocate appearing on behalf of the State opposes the

prayer for anticipatory bail by drawing our attention to the order dated November 8, 2017 passed by a co-ordinate bench of this court in C.R.M. No. 9550 of 2017 filed by the present petitioner no. 1. The learned advocate further draws our attention to the order dated October 21, 2020 passed in C.R.M. 8497 of 2020 filed by the petitioner no. 2, which stood rejected.

However, presently we are not concerned with the application filed by the petitioner no. 2 being C.R.M. 8497 of 2020 as he has already been granted bail by the trial court. In relation to the application filed by the present petitioner no. 1, it appears that the said application was rejected by a co-ordinate bench of this court on November 8, 2017. The said order reads thus :

”Heard the learned Counsel appearing on behalf of the parties.

Having considered the materials in the case diary, prima facie disclosing the involvement of the petitioner in the alleged cultivation of opium poppy plants on a commercial scale, we are of the opinion that this is not a fit case to grant anticipatory bail to the petitioner.

Accordingly, the prayer for anticipatory bail of the petitioner stands rejected.”

The aforesaid fact of rejection of earlier petition filed by the petitioner no. 1 has been suppressed in the present application. In view thereof, the prayer for anticipatory bail of the petitioner no. 1, stands rejected with costs assessed at Rs. 10,000/- (Rupees ten thousand) only to be deposited with the State Legal Services Authority within two weeks from date.

In so far as prayer for anticipatory bail of the petitioner no. 3 is concerned, the same is taken up for consideration. Taking into consideration our order passed in a similar matter being C.R.M. 736 of 2021 (In re: Sokuruddin Sk. @ Sukreb Seikh & ors.) on April 9, 2021 which concerned with the same subject case, we are of

the opinion that the petitioner no. 3 is entitled to anticipatory bail. The said opinion is formed after perusing the materials available in the case diary and having regard to the fact that the investigation has been concluded in filing the charge sheet and there are more than forty accused persons. Further the materials collected speak that the petitioner no. 3 has been implicated for being owner/co-sharer of the land.

Under such circumstances, we direct that in the event of arrest of the petitioner, namely, **Dhashu @ Dasu Karmakar**, he shall be released on bail upon furnishing a bond of Rs. 10,000/- (Rupees ten thousand) only with two sureties of like amount, one of whom must be local, to the satisfaction of the arresting officer, subject to the conditions as laid down in sub-section (2) of Section 438 of the Code of Criminal Procedure.

We make it clear that this order of anticipatory bail in so far as the petitioner no. 3 is concerned shall remain in force for a period of four weeks within which time the petitioner no. 3 shall surrender before the Fourth Special Court under the Narcotic Drugs and Psychotropic Substances Act and pray for regular bail. The Special Court shall consider the bail prayer of the petitioner no. 3 in accordance with law independently and without being influenced by any of the observations made by us.

The application for anticipatory bail is, thus, **disposed of**.

dns

(**Suvra Ghosh, J.)**

(**Soumen Sen, J.)**