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18-05-2021

Court 28

**C.R.M. 1251 of 2021
(Via Video Conference)**

In Re: An application for anticipatory bail under Section 438 of the Code of Criminal Procedure in connection with Special Case No. 34 of 2016 (ref:- S.I.'s S.L. No. 94/15-16 dated 19.01.2016) of Excise, Sadar R.P.U., Malda, punishable under Section 18(c)/8(b) of the N.D.P.S. Act.

Allowed

Elam Sk. @ Elam Sekh & Anr.
Versus
State of West Bengal & Anr.

Mr. Mounick Ghosh, Adv.

...for the petitioners.

Mr. N. Ahmed, Adv.

Md. Anwar Hossain, Adv.

Mr. Palash Kr. Majhi, Adv.

...for the State.

The present application under Section 438 of the Code of Criminal Procedure has been preferred by the petitioners in connection with a proceeding being Special Case No. 34 of 2016 (ref:- S.I.'s S.L. No. 94/15-16 dated 19.01.2016) of Excise, Sadar R.P.U., Malda, punishable under Section 18(c)/8(b) of the Narcotic Drugs and Psychotropic Substances Act, 1985.

The learned advocate for the petitioners submits that the petitioners have been implicated along with other 40 accused persons in the instant case. Learned advocate submits that there are 17 different dag nos. from which the samples were drawn and thereafter on completion of investigation, complaint was filed before the learned Special Court. He further submits that no notice was ever served upon the petitioners so that they could have knowledge regarding the case.

Additionally the learned advocate submits that in view of their innocence, the petitioners may be granted the relief as prayed for. It has been further submitted by the learned advocate that the persons similarly placed, have been granted anticipatory bail by a coordinate Bench in CRM 736 of 2021 on 9th April, 2021.

Mr. Banerjee, learned advocate appearing for the State opposes the

prayer for anticipatory bail and submits that the other accused persons, who were arrested, were granted bail after they suffered substantial period of detention and the present petitioners have been evading the process of law for about 4 years.

We have perused the materials in the case dairy and having regard to the fact that the investigation has already been concluded and there are more than 40 accused persons, further the materials collected speak that the petitioners have been implicated for being owner/co-sharer of the land, as such we are of the opinion that custodial detention of the petitioners may not be warranted.

Accordingly, we allow the application for anticipatory bail and direct that in the event of arrest, the petitioners shall be released on bail upon furnishing a bond of Rs. 10,000/- (Rupees Ten Thousand only) each, with two sureties of like amount each, one of whom must be local, to the satisfaction of the Arresting Officer and subject to the conditions as laid down under Section 438(2) of the Code of Criminal Procedure, 1973.

We make it clear that this order of anticipatory bail will remain in force for a period of 4 weeks within which the petitioners shall surrender before the learned Special Court and pray for regular bail. The Special Court shall consider the bail without being influenced by any observations made by this Court.

The application for anticipatory bail, being CRM 1251 of 2021 is, thus, disposed of.

All parties shall act on the server copies of this order duly downloaded from the official website of this Court.

(Suvra Ghosh, J.)

(Soumen Sen, J.)