

10. 22.09.2021

Ct.32

Tanmoy

Rejected

C.R.M. 2805 of 2021

In Re: - An application for anticipatory bail under Section 438 of the Code of Criminal Procedure filed on **17/03/2021** in connection with **N.D.P.S. Case No. 04 of 2021 (NCB Crime No.05/NCB/KOL/2021)** dated **04/02/2021** under Sections **8(c)/18(c)/28/29** of the N.D.P.S. Act, 1985.

And

In the matter of: - **Samiran Ghosh**

...petitioner.

Mr. Uday Sankar Chattopadhyay,
Mr. Suman Sankar Chatterjee,
Mr. Santanu Maji,
Mr. Subhayu Das

...for the petitioner.

Mr. Y.J. Dastoor, Ld. A.S.G.,
Mr. Phiroze Edulji,
Mr. Sarda Sha

...for the U.O.I.

This is a case under Sections 8(c)/28/29 of the Narcotic Drugs and Psychotropic Substances Act, 1985. Learned Advocate for the petitioner submits that there has been no recovery from the possession of this petitioner and furthermore, there is no incriminating material to implicate this petitioner in the instant case. Accordingly, his prayer for anticipatory bail may be allowed.

Opposing such prayer of the petitioner, learned Additional Solicitor General submits that on getting source information when the Narcotics Control Bureau (for short 'N.C.B.') tried to apprehend this petitioner, at that point of time he fled away from his house and there has been recovery of contraband substances from the house of this petitioner and as such, the complicity of this petitioner in the alleged offence is very much evident from the material available. It appears from the search-cum-seizure

list that contraband substances have been seized from the residence of this petitioner and further, he evaded arrest by fleeing away. Notice under Section 67 of the Narcotic Drugs and Psychotropic Substances Act, 1985 was issued to the petitioner but he failed to respond. Learned Advocate for the petitioner, referring to the decision of Hon'ble Apex Court in **Tofan Singh – Versus – State of Tamil Nadu**, reported in **(2021) 4 SCC 1**, submits that non-compliance of Section 67 notice is of no evidentiary value.

However, from the facts and circumstances of the case, we find that there has been recovery from the house of this petitioner and at the same time, he fled away from the scene of occurrence after the N.C.B. tried to apprehend him. As commercial quantity of contraband substances were recovered from the house of the petitioner, the statutory restriction in Section 37 of the Narcotic Drugs and Psychotropic Substances Act, 1985 comes into operation and we are not inclined to admit the petition for anticipatory bail.

We also note that complaint was filed amongst others this petitioner on 26th of July, 2021 and subsequently, warrant of arrest has been issued against him.

Accordingly, the application for anticipatory bail being C.R.M. 2805 of 2021 is **dismissed**.

All parties shall act in terms of server copy of this order downloaded from the official website of this Court.

(Bivas Pattanayak, J.)

(Arijit Banerjee, J.)