

CRM 4789 of 2021
(via video conference)

Re: An application for anticipatory bail under Section 438 of the Code of Criminal Procedure.

In the matter of : **Kaosar Sk. alias Kaosar Sekh alias Kousar Ali Sk.**

..... petitioner

Md. Sabir Ahmed
Mr. Abdul Aziz Mondal

.....For the petitioner

Mr. Subrato Roy

.....For the State

Apprehending arrest in connection with Kotwali Police Station Case No. 124 of 2021 dated 10.02.2021 under Section 20(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985, the present application has been preferred.

Mr. Ahmed, learned advocate appearing for the petitioner submits that the petitioner has been falsely implicated only on the basis of a purported license executed on 12th December, 2019 for a period of 12 months. The alleged recovery was in the month of February, 2021 from one Pratima Roy, who was residing along with the landlord, namely, Kuddus Ali Mondal in the concerned premises.

He further submits that the petitioner is a resident of the district of Nadia and has no nexus whatsoever with the alleged offence. Upon completion of investigation charge sheet has been submitted and as such, custodial detention is not warranted.

Mr. Roy, learned advocate appearing for the State opposes the petitioner's prayer and draws our attention to several documents in the case diary including the statement of Pratima Roy, as recorded under Section 161 of the Code of Criminal Procedure and the seizure list.

It appears that in the charge sheet Pratima Roy has been named as an accused as well as a witness.

Prima facie, from the materials in the case diary, it appears that Pratima Roy was residing with Kuddus Ali Mondal in the concerned premises. The petitioner appears to have been roped in only on the basis of the license, executed for a period of 12 months on 12th December, 2019. There is no contemporaneous material pertaining to the effect that the petitioner was residing in the concerned premises on the date of recovery of contraband substance.

In view thereof, we are of the opinion that the rigors of Section 37 of the NDPS Act are not attracted in the present case and as such, the petitioner's prayer for anticipatory bail is allowed.

Accordingly, we allow this application and direct that in the event of arrest the petitioner, namely, **Kaosar Sk. alias Kaosar Sekh alias Kousar Ali Sk.** shall be released on bail upon furnishing a bond of Rs.10,000/-, with two sureties of like amount each, one of whom must be local, 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.

It is further directed that the petitioner shall not tamper with the evidence and/or intimidate the witnesses. He shall also attend learned Court below on all the dates, as specified for hearing.

In the event the petitioner fails to comply with the aforesaid directions, without any justifiable cause, the learned Court below shall be at liberty to cancel his bail, in accordance with law, without further reference to this Court.

The application for anticipatory bail, being CRM 4789 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.

(Sugato Majumdar, J.)

(Tapabrata Chakraborty, J.)