

13.12.2021  
SL No.7  
Court No.1  
(SK)

***Circuit Bench of Calcutta High Court  
At Jalpaiguri***

**CRM 403 of 2021  
(Via video Conference)**

In Re:- An application for anticipatory bail under section 438 of the Code of Criminal Procedure filed in connection with NDPS Case No. 32 of 2017 arising out of NCB Crime No. s23/NCB/KOL/2017 dated 03.04.2017 under Sections 8(c)/20(b)(ii)(c) of the NDPS Act, 1985.

And

In the matter of : **Subhas Saha @ Bhakto Saha**  
- Petitioner.

Mr. Arnab Saha  
... For the Petitioner.

Mr. Sudipto Majumder,  
Mr. Ratan Banik ... For the NCB.

The learned Counsel for the petitioner submits that the petitioner is innocent and has been falsely implicated on the basis of the statement of the co-accused persons, which is inadmissible in evidence.

The learned Counsel for the NCB, however, opposes the prayer for anticipatory bail. It is submitted that the petitioner is the beneficiary of the narcotic item and he has been falsely implicated on the basis of the statement of the co-accused persons from whom recovery has been made.

Considering the materials available on record and the fact that no recovery has been made from the petitioner and the

petitioner was implicated on the basis of the statement made by the co-accused persons which are inadmissible in evidence, we are of the opinion that the petitioner is able to rebut the presumption under Section 37 of the NDPS Act and is entitled to grant anticipatory bail. Moreover, the charge-sheet has already been filed and as such no custodial interrogation is required. As such, the prayer for anticipatory bail of the petitioner is allowed.

Accordingly, we direct that in the event of arrest the petitioner, **Subhas Saha @ Bhakto Saha**, 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, 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.

This order shall remain valid for six weeks from this date within which time, the petitioner shall surrender and obtain regular bail from the Learned Sessions Judge, 1st Court, Cooch Behar. We make it clear that the Learned Sessions Judge while deciding the application for grant of regular bail shall take a decision independent of the observations made by us in this order.

The application for anticipatory bail, being CRM No.403 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.

**(Biswajit Basu, J.)**

**(Soumen Sen, J.)**