

10.03.2022

Court No.32
rpan / **143**

CRM 3885 of 2021

In Re:- An application for anticipatory bail under Section 438 of the Code of Criminal Procedure;

And

In Re.: **Bipen Ghosh**

- Petitioner

Mr. Sekhar Kumar Basu, Ld. Sr. Adv.,
Mr. Kusal Kumar Mukherjee,
Mr. Diptangshu Basu,
Ms. Suchismita Dutta

... for the Petitioner.

Mr. Sanjoy Bardhan,
Mr. Nirmal Kumar Majhi

... for the State.

Apprehending arrest in connection with Raghunathganj Police Station Case no.575 of 2020 dated 12.11.2020 under Sections 22(c)/29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 [**NDPS Case no.269 of 2020**], the petitioner has filed the present application.

Mr. Basu, learned senior advocate appearing for the petitioner submits that the petitioner has been roped in on the basis of mere suspicion. He was the previous owner of the truck which was intercepted on the date of the incident i.e. on 12th November, 2020. He sold the said truck to one Sukhen Saha way back on 18th August, 2020, as would be explicit from the agreement, the Form-29 and Form-30 pertaining to transfer of ownership and the delivery note as annexed at pages 11 – 19 of the present application. The vehicle stands hypothecated to the HDFC Ltd. and Sukhen Saha is paying the loan instalments to the said finance company.

Drawing our attention to the contents of the chargesheet, he submits that the petitioner's statement stands corroborated by the finding arrived at by the Investigating Officer.

Mr. Bardhan, learned advocate appearing for the State, however, strongly opposes the petitioner's prayer and draws our attention to the statements of the witnesses, as recorded under Section 161 of the Code as well as the seizure list. The vehicle documents, as seized, clearly reflect that the petitioner is the owner of the same. The petitioner has direct involvement in the alleged offence which pertains to contraband substance above commercial quantity and as such, the statutory restrictions are clearly attracted.

He informs this Court that the anticipatory bail application preferred by Sukhen Saha has already been rejected by a coordinate Bench of this Court.

Heard the learned advocates and considered the materials in the case diary.

In the chargesheet it has, *inter alia*, been observed:

'PC accd Tapan Biswas made statement that he well known his present owner of truck No.WB-76A/7609 namely Sukhen Saha s/o Jogen Saha of Narasinghapur Sagarpara, PS Jalangi, Dist Murshidabad has been residing at Kathuriapara, Krishnanagar PS Kotowali, Dist Nadia since two years, who purchased the said Truck from Bipen Ghosh s/o Balaram Ghosh of Debagram PS Kaliganj Dist Nadia Pin-741137 on power of attorney on Notary Public as the Truck is still hypothecated by Finance Company.'

Prima facie, from the contents of the agreement, the Form-29 and Form-30 pertaining to transfer of ownership, as executed by the petitioner in favour of Sukhen Saha and the delivery note, it appears that the petitioner sold the concerned truck to one Sukhen Saha about three months prior to the alleged incident. The vehicle stands hypothecated to the HDFC Ltd. and Sukhen Saha is paying the loan instalments.

The petitioner's name has transpired on the basis of the co-accused statement before a police officer, which is inadmissible in evidence. Upon assessing the materials on record it, *prima facie*, appears that the petitioner did not have any conscious possession of contraband substance. Sukhen Saha stands on a different footing since the possession of the said vehicle was taken over by him about three months prior to the alleged incident.

In the backdrop of such sequence of facts, it would not be appropriate to deny the petitioner's liberty, at this stage, in spite of the statutory restrictions under Section 37 of the NDPS Act and his custodial interrogation is not necessary, more so when, upon completion of investigation charge sheet has been submitted. As such, his prayer for anticipatory bail is allowed.

Accordingly, we direct that in the event of arrest the petitioner, namely, **Bipen Ghosh** 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.

It is further directed that the petitioner shall attend the learned court below on all the dates specified for hearing and shall not tamper with the evidence and/or intimidate the witnesses in any manner whatsoever.

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 3885 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.)