

08.06.2022
cm/ct 28
sl no. 129

C.R.M.(A) No. 2441 of 2022

In Re : An application for anticipatory bail under section 438 of the Code of Criminal Procedure in connection with **Malda P.S Case No. 556 of 2021** dated **12.11.2021** under Sections **21 (C)/29** of the NDPS Act.

And

Allowed

In Re : Asif Mohammad @ Asif @ Viki

..... petitioner

Mr. Debasish Roy

Mr. Mrityunjoy Chatterjee

..... for the petitioner

Mr. Swapan Banerjee

Ms. Purnima Ghosh

..... for the State

Report is placed on record.

Learned advocate for the petitioner submits no narcotic substance was recovered from the possession of his client. It is further submitted he has been falsely implicated in the instant case.

Learned Senior Government Advocate for the State submits petitioner is a man from Uttar Pradesh. Statement of co accused implicates the petitioner. Further enquiry was made and it was found petitioner was using fake SIM cards to communicate with co accuseds. Prayer has been made to collect consumer application form (CAF) with regard to the said SIM cards.

We have considered the materials on record. Conspiracy of the petitioner with co accuseds is primarily based on statements of the co accuseds before police officer which are inadmissible in evidence. Further report submitted also does not show the

petitioner was owner of the SIM Card/mobile phones through which telephonic conversations had been made with co accuseds.

In view of the aforesaid circumstances, we are of the opinion allegation of conspiracy against the petitioner is based on shaky foundation and he is able to rebut statutory restrictions under Section 37 of the NDPS Act. Hence, petitioner may be granted pre-arrest bail subject to strict conditions.

Accordingly, we direct that in the event of arrest, the petitioner shall be released on bail upon furnishing a bond of Rs. 20,000/- each with two sureties of like amount each, to the satisfaction of the Arresting Officer and also subject to the conditions as laid down under Section 438(2) of the Code of Criminal Procedure, 1973 and on condition petitioner shall meet the officer-in-charge of Malda Police Station once in a fortnight or until further orders.

Petitioner shall appear before the court below and pray for regular bail within four weeks from date.

Investigation officer is present. His personal appearance is dispensed with.

The application being CRM (A) No. 2441 of 2022 is disposed of.

(Ananya Bandyopadhyay, J.)

(Joymalya Bagchi, J.)

