

8 30.08.2022
(AD) Court No.29
(Allowed)

C.R.M. (A) 4071 of 2022

In Re: - An application for anticipatory bail under Section 438 of the Code of Criminal Procedure in connection with NDPS seizure CaseNo.S/C No:12/NDPS/CL/Phensedyl/BCPU/CCP/WB/2021-22 dated **27/11/2021**, under Sections **21(c)/29** of the Narcotic Drugs and Psychotropic Substances Act, 1985, corresponding to NDPS Case No.262/2021.

And

In the matter of: **Bipad Bhanjan Sarkar**

....petitioner.

Mr. Jisan Iqubal Hossain

...for the petitioner.

Mr. Kaushik Dey

Ms. Ekta Sinha

...for the Custom Authorities.

Petitioner prays for anticipatory bail.

Affidavit of the Commissioner of Customs filed in Court be taken on record.

The petition for anticipatory bail was received by the relevant range office of the Customs on August 20, 2022. The petition remains unattended by the Customs since August 23, 2022 even after the matter was appearing in the list.

The justification for non-appearance of the Customs authorities when the matter was taken up from August 23, 2022 onwards is that, there was a problem with the software on August 23, 2022 and August 24, 2022.

Surely, the Customs authorities will ensure a better representation in Court henceforth.

In the facts of the present case, the petitioner is sought to be proceeded against on the basis of the statement of the co-accused made while in custody. No narcotics were recovered from the possession of the petitioner. The Custom authorities filed the final complaint with the jurisdictional Court. The

Customs authorities at this stage are unable to demonstrate any nexus between the petitioner and/or the person arrested with the commercial quantity of narcotics and/or the seized commercial quantity of narcotics excepting the statement of the co-accused made while in custody.

In such circumstances, we are of the view that the petitioner is able to overcome the restrictions under Section 37 of the NDPS Act, 1985. Consequently, we grant anticipatory bail to the petitioner.

Accordingly, we direct that in the event of arrest, the petitioner shall be released on bail upon furnishing a Bond of Rs.10,000/- (Rupees Ten Thousand Only), 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 that the petitioner shall appear on every date before the jurisdictional Court on and from the date fixed for appearance of the accused and in default, the jurisdictional Court will pass appropriate order to secure the presence of the petitioner in Court including cancelling the anticipatory bail granted without further reference to this Court.

The prayer for anticipatory bail of the petitioner is allowed.

C.R.M. (A) 4071 of 2022 is disposed of.

(Debangsu Basak, J.)

(Bibhas Ranjan De, J.)