

75 18.04.2022
(AD) Court No.29
(Rejected)

C.R.M. 8417 of 2021

In Re: - An application for anticipatory bail under Section 438 of the Code of Criminal Procedure in connection with **NCB Crime No.79/NCB/Kol/2021** dated **27.11.2021** under Section **8(c)** read with Sections **22(c)/28/29** of the Narcotic Drugs and Psychotropic Substances Act, 1985.

And

In the matter of: - Anup Kumar Chakroborty & Anr.
...petitioners.

Mr. Sekhar Kumar Basu, Sr. Advocate
Mr. Kusal Kumar Mukherjee

... for the petitioners.

Mr. Amajit De

...for the NCB.

Petitioners seek anticipatory bail.

Learned Senior Advocate appearing for the petitioners submits that no narcotics was recovered from the possession of the petitioners. The petitioners are sought to be proceeded against on the basis of the statement of the co-accused made while in custody. He relies upon the decisions of the Coordinate Bench in support of his contention that call details recording at best can give rise to a suspicion. In support of such contention, he relies on the order dated December 21, 2020 passed in CRM 8145 of 2020 (In the matter of *Abdul Malique & Ors.*) and the order dated July 14, 2021 passed in CRM 10765 of 2020 passed (In Re: *Samir Dey*).

Learned Advocate appearing for the Narcotic Control Bureau (NCB) submits that there are calls details record establishing the nexus between the petitioners herein and the persons arrested with the commercial quantity of narcotics. The

investigations are in progress. He refers to the chemical analysis report which establishes the narcotics seized. He submits that the NCB is yet to submit the final report before the jurisdictional Court.

There are call details recording between the petitioners herein and the persons arrested with the commercial quantity of narcotics. In the case of *Abdul Malique & Ors.*, the Coordinate Bench considered the statements of the co-accuseds and of the petitioners therein recorded under Section 67 of the NDPS Act. The Coordinate Bench also considered that there were call details recordings showing active communication between the petitioners therein and the other accused persons. The Coordinate Bench observed that mere presence near the place of occurrence or telephonic conversation with co-accused persons, even if believed to be true, may give rise to mere suspicion and would not justify a *prima facie* case of conspiracy so as to deny the petitioners' liberty. Reliance was placed on *2020 SCC Online SC 882 (Tofan Singh vs. State of Tamil Nadu)*. In the case of *Samir Dey*, the Coordinate Bench held that the call detail records and the telephonic conversation of the petitioner with the co-accused may give rise to a mere suspicion and would not justify a case of conspiracy.

In *CRM 1761 of 2021 (Mantosh Ghosh vs. State of West Bengal)* another Coordinate Bench held that, call details report is one of the *prima facie* grounds on petitioner's involvement in the offence under the Act of 1985.

Each application for bail is considered on the basis of the materials in the case diary. In the two matters before the

Coordinate Bench, the materials in the case diary persuaded Their Lordships to grant orders for bail.

In the facts of the present case, there are call details recording between the petitioners and the co-accused arrested with the commercial quantity of narcotics. The investigations are yet to be concluded. The NCB is yet to submit the final report. At this stage, there is no material to arrive at a finding that there was no nexus between the petitioners and the person arrested with the commercial quantity of narcotics.

On the basis of the materials in the case diary and the call details recording, we are of the view that the petitioners are unable to overcome the restrictions under Section 37 of the NDPS Act, 1985. Consequently, we are unable to enlarge the petitioners on anticipatory bail.

Accordingly, the prayer for anticipatory bail of the petitioners is rejected.

C.R.M. 8417 of 2021 is dismissed.

(Debangsu Basak, J.)

(Bibhas Ranjan De, J.)