

02.03.2022

COURT : 01
ITEM : 26
MATTER : 438
STATUS : ALLOWED
TRANSCRIBER : Saswata

**CIRCUIT BENCH OF CALCUTTA HIGH COURT
AT JALPAIGURI**

CRM (A) 43 of 2022

In Re:- An application for anticipatory bail under section 438 of the Code of Criminal Procedure filed in connection with Dinhata Police Station Case No. 428 of 2021 dated 20.08.2021 under Sections 21(C)/29 of the NDPS Act, 1958.

And

In the matter of : **Chanchal Roy @ Mithu Roy**

...Petitioner

Mr. Arjun Chowdhury

...for the Petitioner

Mr. Abhijit Sarkar

Mr. Biswarup Roy

...for the State

Apprehending arrest, the petitioner has filed the instant application for anticipatory bail in connection with Dinhata Police Station Case No. 428 of 2021 under Sections 21(C)/29 of the NDPS Act, 1958

Learned advocate for the petitioner submits that the similarly circumstanced co accused had already been granted bail by this Court, who were also apprehended in connection with the aforementioned case on the statement of the co accused from whom the contraband was recovered. It is submitted that since the petitioner stands on the same footing, he is entitled to be released on anticipatory bail on the ground of parity.

Learned advocate for the State opposes the prayer for bail and tried to make a distinction between the accused and other other co accused, namely, Premjit that subsequent to the release of the said accused, the call details report (CDR) was obtained which would establish a

link of the petitioner in commission of the aforesaid offence.

Our attention is drawn to the CDR, wherefrom it appears that there has been a call at a particular number between the period from 18/08/2021 to 19/08/2021 but there is no material that on the date of the incident, i.e., 20/08/2021 no call was made from the mobile of the petitioner. Furthermore, those calls were made to the other co accused, namely, Premjit and not the accused who were intercepted having possessed contraband above the commercial quantity.

Since the said co accused had already been enlarged on bail, we do not find that because of the CDR, the petitioner has disentitled himself to be released on anticipatory bail. We do not find any link having established from the said CDR that at the time of carriage of the contraband, there was any contact with the petitioner and, therefore, we do not find any justification in not extending the benefit under Section 438 of the Code of Criminal Procedure.

As such, the prayer for anticipatory bail is ***allowed***.

Accordingly, in the event of arrest the petitioner namely **Chanchal Roy @ Mithu Roy** shall be released on bail upon furnishing a bond of Rs.10,000/-, with two sureties like amount each, one of whom must be local to the satisfaction of the arresting officer on further condition as enshrined under Section 438(2) of the Code of Criminal Procedure.

It is further directed that the petitioner shall attend the learned trial Court on all the dates, as fixed for hearing

until further order and shall not intimidate the witnesses and/or tamper with evidence in any manner whatsoever.

In the event the petitioner fails to adhere to any of the conditions stipulated above without any justifiable cause, the Trial Court shall be at liberty to cancel the privilege of Section 438 of the Code of Criminal Procedure.

The application being CRM (A) 43 of 2022 is accordingly disposed of.

(Harish Tandon, J)

(Rabindranath Samanta, J)