

31.03.2023

16

Ct. No. 29

KAUSHIK

Partly

Allowed

C.R.M.(A) 1373 of 2023

In Re:- An application for anticipatory bail under Section 438 of the Code of Criminal Procedure in connection with **Kaliachak** Police Station Case No. **236** of **2023** dated **02.03.2023** under Sections 21(c)/27A/29 of the Narcotic Drugs and Psychotropic Substances Act, 1985.

And

In Re : Abu Mia & Ors.

..... petitioners

Ms. Minoti Gomes

Mr. M. A. Chowdhury

....for the petitioners

Mr. Madhusudan Sur

Mr. Dipankar Pramanick

....for the State

Petitioners pray for anticipatory bail.

Learned advocate appearing for the petitioners submits that, the petitioners were falsely implicated.

Learned advocate appearing for the State submits that, the patrolling party identified the petitioner nos. 1 (Abu Mia) and 2 (Bablu Sk. @ Bablu Mia). Other petitioners i.e. petitioner nos. 3 (Asraful Hoque @ Asraful Mia), 4 (Manarul Rahaman @ Manarul Mia), 5 (Mourul Islam @ Mairul Haque) and 6 (Arip Mia @ Arif Mia) were not identified by the patrolling party.

Apparently, the police continued with investigations and it is claimed that the other petitioners i.e. petitioner nos. 3 to 6

are also involved. However, the claim for involvement of the other petitioners is not supported by the statement of any person recorded under Section 161 of the Code of Criminal Procedure.

Therefore, so far as the petitioner nos. 1 and 2 are concerned, given their complicity in the incident, we are unable to grant anticipatory bail to the petitioner nos. 1 and 2.

Accordingly, the application for anticipatory bail is, thus, rejected so far as petitioner nos. 1 and 2 is concerned as in our view they are unable to overcome the restrictions under Section 37 of the NDPS Act, 1985.

So far as the petitioner nos. 3 to 6 are concerned, since the police, at this stage, are unable to demonstrate any nexus between such petitioners and any commercial quantity of narcotic, we are of the view that such petitioners are able to overcome the restrictions under Section 37 of the NDPS Act, 1985.

Consequently, we grant anticipatory bail to the petitioner nos. 3 to 6.

Accordingly, we direct that in the event of arrest the petitioner nos. 3 to 6 shall be released on bail upon furnishing a bond of Rs.10,000/- each, with two sureties of like amount each, to the satisfaction of the arresting officer and also be subject to the conditions as laid down under Section 438(2) of the Code of Criminal Procedure, 1973 and on further condition

that the petitioner nos. 3 to 6 shall meet the Investigating Officer once a week till the conclusion of the investigation and on condition that the petitioner nos. 3 to 6 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 nos. 3 to 6 in Court including cancelling the anticipatory bail granted without further reference to this Court.

This application for anticipatory bail is, thus, partly allowed.

(Debangsu Basak, J.)

(Md. Shabbar Rashidi, J.)