

09.08.2023

SL. 7

Court No. 29

Suvayan

(Allowed)

C.R.M. (A) 2550 of 2023

In Re: - An application for anticipatory bail under Section 438 of the Code of Criminal Procedure filed in connection with **Kaliachawk** Police Station Case No. **1134 of 2022** dated **05.10.2022** under Sections **22(c)/27A/29** of the NDPS Act.

And

In the matter of: **Kuddus Sk @ Abdul Kuddus**

....petitioner.

Mr. Milon Mukherjee, Sr. Adv.

Mr. Sandip Chakraborty

Mr. Kaustav Das

...for the petitioner.

Mr. Madhusudan Sur, APP

Ms. Sreyashee Biswas

...for the State.

1. Heard learned Counsel for both the parties.
2. The petitioner is stated to be the uncle of alleged principal accused Kalu Sk. Learned Senior Counsel for the petitioner regarding such allegation submits that the present petitioner is uncle of the aforesaid Kalu Sk by village courtsey only. There is no material against the petitioner to the effect that he is a resident of the property from which 1.75 k.g. of heroin was seized. There is omnibus allegation by neighbors to the effect that some persons including the present petitioner is involved in such offence.
3. Learned Counsel for the State fairly submits that there is no record of past criminal antecedent against the present petitioner though there are record of past criminal antecedent of similar nature against other co-accused persons.
4. Learned Counsel for the State is vehement on his submission that prayer for anticipatory bail moved by the co-accused persons has been rejected by the co-ordinate Bench.
5. We feel persuaded to say here that rejection of a prayer for

bail or anticipatory bail by a co-ordinate Bench does not disentitle co-accused person from moving the Court and rejection cannot be pressed as a ground of parity by the State.

6. From the C.D. itself, we found that the spot house is situated on J.L. No. 158, Dug No. 336 and Dug No. 137 in Mouza Srirampur under P.S. Kaliachawk in the District of Malda whereas the residential house of the present petitioner is at Dug No. 139 according to Khatian No. 279 in the self-same Mouza and P.S. Such materials in the C.D. itself negative the submission by learned Counsel for the State to the effect that the present petitioner was also resident of the house from where the contraband articles has been seized.
7. We do not propose to go into the satisfaction of requirement of Section 42 NDPS Act, in view of our discussion (Supra) as it may prejudice the trial specially when the petitioner is found to be not a resident of the house from where the contraband has been seized.
8. Regard being had to such facts and submissions, factum of permanent residence of the petitioner, nature of evidence and substantial progress in investigation, it is directed that the petitioner shall be released on bail by the Arresting Officer in the event of his arrest in the aforesaid P.S. case on such terms and conditions as deemed just and proper in the facts and circumstances of the case including the conditions that:
 - i) The petitioner is directed to appear before the I.O. twice in a week on the day and time fixed by the I.O. for the purpose of investigation till

submission of F.F.

- ii) The petitioner shall not leave the jurisdiction of the aforesaid P.S. without obtaining prior leave from the I.O.

9. The concerned Arresting Officer is hereby directed to act upon the server copy of this order.
10. Within 21 days from today the petitioner shall appear before the I.O. alongwith a server copy/certified copy of this order. If server copy is supplied, learned I.O. shall act upon that.
11. Accordingly, the prayer for the anticipatory bail is allowed.
12. The application being **CRM (A) 2550 of 2023** is disposed of.

(Chitta Ranjan Dash, J.)

(Partha Sarathi Sen, J.)

