

25.08.2023

SL. 8

Court No. 29

Sourav

(Allowed)

C.R.M. (A) 3248 of 2023

In Re: - An application for anticipatory bail under Section 438 of the Code of Criminal Procedure in connection with **Berhampore** Police Station Case No. **368** of **2022** dated **25.03.2022** under Sections **22(c)/29** of the NDPS Act (corresponding to NDPS Case No. 81 of 2022).

And

In the matter of: **Sofikul Sk.**

....petitioner.

Ms. Minoti Gomes.

Mr. Jisan Iqubal Hossain

...for the petitioner.

Mr. Sanjoy Bardhan

Ms. Debjani Dasgupta

... for the State.

1. Heard learned Counsel for the parties.
2. The petitioner is admittedly the registered owner of the pick up van which is a commercial vehicle. Huge quantity of phensedyl was seized from that vehicle and the owner was admittedly not present at the spot of seizure.
3. Now, learned Counsel for the State submits that the owner can be held liable on the basis of presumption available to this Court under Sections 35 and 54 of the NDPS Act. This according to us, is a very dangerous proposition which no State Counsel should address to a Court, presumption shall arise only on prove of certain facts by the prosecution. Presumption is not automatic and the prosecution is not free from proving the facts for the Court to reach to a condition to raise the presumption.
4. As the vehicle was a commercial vehicle, after the vehicle leaves the purview of eye of the owner, the owner has no effective control over such vehicle. The vehicle may be used by

either the person who has hired it or the driver for any oblique purpose. But in such a situation, the guilt of the owner at this stage at least on the basis of presumption cannot be inferred. This is a question of fact to be left to the Trial Court to decide.

5. Regard being had to such facts and submissions, factum of permanent residence of the petitioner, nature of allegation and completion of investigation, it is directed that the petitioner shall surrender before the learned Judge, Special Court (NDPS Act), 5th Court, Berhampore, Murshidabad in NDPS Case No. 81 of 2022 arising out of the aforesaid P.S. case within 15 days from today. On his appearance and application for bail the petitioner shall be released on bail on such terms and conditions as deemed just and proper in the facts and circumstances of the case including the condition that each of the petitioner shall appear before the learned Trial Court on each date of substantive hearing subject to provision of Section 317 Cr.P.C.
6. Accordingly, the prayer for the anticipatory bail is allowed.
7. The application being **CRM (A) 3248 of 2023** is disposed of.
8. Learned Judge, Special Court (NDPS Act), 5th Court, Berhampore, Murshidabad is hereby directed to act upon the server copy of this order, if required.

(Chitta Ranjan Dash, J.)

(Partha Sarathi Sen, J.)

