

28.08.2023
SL. 9
Court No. 29
Suvayan
(Rejected)

C.R.M. (A) 3263 of 2023

In Re: - An application for anticipatory bail under Section 438 of the Code of Criminal Procedure filed in connection with **Kaliachak** Police Station Case No. **875 of 2022** dated **12.08.2022** under Sections **21(c)/27A/29** of the NDPS Act.

And

In the matter of: **Md. Ziaul Hoque**

....petitioner.

Mr. Sourav Chatterjee
Ms. Namrata Chatterjee

...for the petitioner.

Mr. Sanjoy Bardhan
Mr. Palash Chandra Majhi

...for the State.

1. Heard learned Counsel for both the parties.
2. It is submitted by learned Counsel for the State that though charge-sheet has been filed, investigation has been kept open by permission of the competent Court. The present petitioner is admittedly a licensed medical shop owner. It is alleged that huge consignment of phensedyl was found from the possession of one Alok Mondal. The said Alok Mondal took the name of Md. Azizur Rahaman. From the statement of Md. Azizur Rahaman the name of present petitioner transpires. From the report called for from the manufacturer, it is found that a portion of this huge consignment was supplied to the medicine shop owned by the present petitioner. There is also material to show that there have been several calls between the present petitioner and the aforesaid Md. Azizur Rahaman. One statement of independent witness recorded under Section 164 Cr.P.C. also point out to the involvement of the present petitioner in such illegal business.
3. Learned Counsel for the petitioner on the basis of such material submits that the Court is to find out whether the

stock was supplied by the present petitioner for medical and scientific purpose or non-medical or other purpose. Learned Counsel for the petitioner further submits that the entire transaction may come within the purview of Drugs and Cosmetics Act and not under NDPS Act.

4. We are of the *prima facie* view that when any medical preparation from narcotic drugs and psychotropic substances in the schedule of NDPS Act is/are used for any medical preparation. Presumption is that it has got medical use but when huge consignment is trafficked illegally by any medical shop owner in the guise of his licence and with oblique purpose it is *prima facie* found to be non-medical and non-scientific and offence under the provision of NDPS act is attracted. Drugs and Cosmetics Act is applicable for control, supervision and adulteration, etc. of drugs etc.
5. In the present case, if the petitioner is found to be connected with the illegal transport of consignment, offence under provisions of NDPS Act shall be attracted.
6. If the petitioner has had the *bona fide*, he should have co-operated in the investigation by appearing before the I.O. on receipt of notice under Section 67 NDPS Act or he should have approached the Court earlier without waiting for such a longtime. Therefore, we do not find any *bona fide* on the part of the petitioner. The investigation having been kept open. We are satisfied that there is necessity of custodial interrogation of the present petitioner.
5. Accordingly, the prayer for the anticipatory bail is rejected.

6. The application being **CRM (A) 3263 of 2023** is dismissed.

(Chitta Ranjan Dash, J.)

(Partha Sarathi Sen, J.)

