

22.11.2023

SL. 19

Court No. 29
Suvayan

(Partly Allowed)

C.R.M. (A) 4353 of 2023

In Re: - An application for anticipatory bail under Section 438 of the Code of Criminal Procedure filed in connection with **Bhagwangola** P.S. case No. **148 of 2023** dated **18.04.2023** under Sections **21(C)/29** of the NDPS Act arising out of NDPS Case No. **53 of 2023** pending before the learned Judge, Special Court (NDPS Act), Murshidabad, Berhampore.

And

In the matter of: **Sagar Ali @ Nayon Sk & Anr.**

....petitioners.

Mr. Ali Ahsan Alamgir

Ms. Soma Mal

Ms. Rabia Khatoon

Ms. June Modak

...for the petitioners.

Mr. Binay Panda

Ms. Puspita Saha

...for the State.

1. Heard learned Advocate for both the parties.
2. Learned Advocate for the State in course of his submission submits a memo of evidence as prepared by S.I. Swapan Barman, Bhagwangola P.S., District – Murshidabad dated 21.11.2023 being I.O. of this case.
3. Let the memo of evidence as filed on behalf of the State be taken on record.
4. Learned Advocate for the petitioners submits before this Court that the present two accused petitioners have been implicated in this case merely on the basis of statement of a co-accused and nothing has been seized from their conscious possession.
5. In course of his submission learned Advocate for the State though had not disputed such position but it is submitted on behalf of the State that as against the present petitioner No. 1 there is one past criminal antecedent which is explicit from the report as submitted today.

6. Considering the entire circumstances and also considering the past antecedent of the present petitioner No. 1 in connection with offences under Section 21(C) of the NDPS Act, we are not inclined to allow the prayer for anticipatory bail in respect of petitioner No. 1 (Sagar Ali @ Nayon Sk) and accordingly prayer for anticipatory bail of petitioner No. 1 (Sagar Ali @ Nayon Sk) is hereby dismissed.
7. So far as petitioner No. 2 (Sarif Sk) is concerned, we find *prima facie* that the petitioner No. 2 is successful in overcoming the rigour of Section 37 of the NDPS Act and accordingly his prayer for anticipatory bail is allowed.
8. Regard being had to facts and submissions, factum of permanent residence of the petitioner No. 2 (Sarif Sk), nature of allegation, nature of evidence and completion of investigation, it is directed that the petitioner No. 2 (Sarif Sk) shall surrender before the learned Judge, Special Court (NDPS Act), Murshidabad, Berhampore within 15 days from today in the NDPS Case No. 53 of 2023 arising out of aforesaid P.S. case. On his appearance and application for bail the petitioner No. 2 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:
 - i) The petitioner No. 2 (Sarif Sk) shall appear before the learned Trial Court on each date of substantive hearing subject to the provision of Section 317 Cr.P.C.
9. The learned Judge, Special Court (NDPS Act), Murshidabad, Berhampore is directed to act upon the server copy of this

order, if required.

10. Accordingly, the prayer for the anticipatory bail is allowed.

11. The application being **CRM (A) 4353 of 2023** is disposed of.

(Chitta Ranjan Dash, J.)

(Partha Sarathi Sen, J.)

