

22.11.2023

SL. 44

Court No. 29

Sourav

(Allowed)

C.R.M. (A) 4452 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. **395** of **2020** dated **21.05.2020** under Sections **21(C)/29** IPC (corresponding to Special Case No. 36 of 2020).

And

In the matter of: **Md. Farman Ali & Ors.**

....petitioners.

Md. Sabir Ahmed
Mr. Tasnim Ahmed
Mr. Dhiman Banerjee
Mr. Suman Biswas
Mr. Soham Chakrabarty

...for the petitioners.

Mr. Ranabir Roy Chowdhury
Mr. Saryati Datta

... for the State.

1. Heard learned Counsel for the parties.
2. The present petitioners are stated to be the joint owner of the godown from which commercial quantity of 250gms of heroine was seized on 21.05.2020.
3. Prior to the aforesaid date of seizure of the contraband, the petitioners through different deeds of agreement sale had handed over the property to another person by delivering the possession of the land for consideration where subsequently a godown was constructed.
4. It is further submitted by learned counsel for the petitioner that though the deed of registration was executed in November 2020, the petitioners are not in possession of the property on the relevant date of the seizure of the contraband. To substantiate such contention, learned Counsel for the petitioner has annexed different documents executed by them at different times prior to the seizure. The question of possession being a question of fact may be gone into at the

time of trial. The contraband being not seized from the conscious possession of the petitioners, admittedly, we do not think rigors of 37 of the NDPS Act is applicable.

5. Regard being had to such facts and submissions, factum of permanent residence of the petitioners, nature of allegation, nature of evidence and completion of investigation, it is directed that each of the petitioner shall surrender before the learned Judge, Special Court (NDPS Act), 3rd Court, Malda in Special Case No. 36 of 2020 arising out of the aforesaid P.S. case within 15 days from today. On their appearance and application for bail, they 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 petitioners shall appear before the learned Trial Court on each date of substantive hearing subject to provision of Section 317 Cr.P.C. with a further condition, the present petitioners shall not leave the territorial jurisdiction of the learned trial Court without obtaining prior permission of the learned trial Court during investigation.
6. Accordingly, the prayer for anticipatory bail is allowed.
7. The application being **CRM (A) 4452 of 2023** is disposed of.
8. Learned Judge, Special Court (NDPS Act), 3rd Court, Malda is hereby directed to act upon the server copy of this order, if required.

(Chitta Ranjan Dash, J.)

(Partha Sarathi Sen, J.)

