

03.05.2023
KC (6)

IN THE HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI
CRIMINAL MISCELLANEOUS JURISDICTION

C.R.M.(A) 195 of 2023

In the Matter of : Birendra Ray

.... petitioner.

Mr. Hillol Saha Poddar,
Ms. Mousumi Das.....For the petitioner.

Mr. A.S. Chakraborty, Ld. A.P.P.,
Mr. Aniruddha Biswas,
Mr. Subhasish Misra.....For the State.

This is an application for grant of anticipatory bail filed under Section 438 of the Code of Criminal Procedure, 1973 in connection with Kumargram Police Station Case No. 126 of 2022 dated 31st March, 2022 under Sections 20(b)(ii)(C)/25/29 of the Narcotic Drugs and Psychotropic Substances Act, 1985, corresponding to NDPS Case No. 38 of 2022.

This is a case arising out of the Narcotic Drugs and Psychotropic Substances Act, 1985.

The petitioner claims to be the registered owner of the truck from where the contraband items were seized.

The principal ground on which the petitioner seeks anticipatory bail is based on an order of this court dated 9th

February, 2023 in CRM (NDPS) 87 of 2023 (Dilip Kumar –vs- State of West Bengal) where this court has granted bail to the driver of the truck, a co-accused.

On the basis of this order it is submitted that since the principal accused was granted bail the petitioner should also be granted anticipatory bail.

Section 37 of the said Act makes it explicit that no person accused of an offence under Sections 19, 24 and 27A of the said Act and also offences involving commercial quantity shall be released on bail unless the court is satisfied that there are reasonable grounds for believing that the accused is not guilty of such offence and that he is not likely to commit any offence while on bail.

What is binding on this bench is the ratio laid down by the said coordinate bench. On reading of the said judgment and order dated 9th February, 2023 we do not find that any reasons are contained therein so as to rebut the presumption under Section 37 of the said Act or to suggest that *prima facie* the accused is not guilty of the offence. If that reason was there it would have been a relevant fact for our consideration. That apart, although there may be more than one accused in an offence the role of each accused is separate and even if it is held that *prima facie* one accused is not guilty of the offence similar conclusion cannot be drawn with regard to a co-accused.

Considering all these factors this application for anticipatory bail CRM(A) 195 of 2023 is rejected.

(I.P. MUKERJI, J.)

(ANANYA BANDYOPADHYAY, J.)