

15.06.2023
SL No.47
Court No.1
(gc)
(Allowed)

***Circuit Bench of Calcutta High Court
At Jalpaiguri***

CRM (A) 404 of 2023

In Re:- An application for anticipatory bail under section 438 of the Code of Criminal Procedure filed in connection with Phansidewa Police Station Case No.250 of 2020, dated 16.05.2020 under Sections 20(b)(ii)(c) of the NDPS Act.

And

In the matter of : **Swapan Debnath**

- Petitioner.

Mr. Sandip Mandal,
Mr. Abhilash Mittal,

... For the Petitioner.

Mr. Aditi Shankar Chakraborty, Ld. A.P.P.,
Mr. Biswarup Roy,

... For the State.

1. The learned Counsel for the petitioner submits that the petitioner has been falsely implicated and his name has transpired from the statement of the co-accused.
2. The learned Counsel for the State in opposing the prayer submits that since he was absconding, steps have been taken for him to declare as proclaimed offender. However, he has not been declared as proclaimed offender.
3. Considering the materials available in the case diary and having regard to the fact that the name of the petitioner transpired from the statement of the co-accused before a police officer which is inadmissible in evidence, the

petitioner is able to rebut the presumption under Section 37 of the NDPS Act.

4. Accordingly, we allow the application for anticipatory bail subject to the following conditions:-

i) The petitioner shall be released on bail upon furnishing a bond of Rs.10,000/-, with two sureties of like amount each, one of whom must be local subject to the satisfaction of arresting officer;

ii) The petitioner shall not tamper with the evidence or hamper the investigation in any manner whatsoever;

iii) The petitioner shall not leave the station without the permission of the jurisdictional Court;

iv) The petitioner shall not make any inducement, threat or promise, directly or indirectly, to the Investigating Officer or any person acquainted with the facts of the case to dissuade him/her from disclosing such facts to the Court or any Police Officer;

v) The petitioner shall attend the trial on every hearing, unless exempted in accordance with law;

vi) The petitioner shall inform the Special Judge, NDPS Court as well as the Officer-in-Charge of the Police Station concerned about his place of residence during bail and trial. Any change in the same shall also be communicated within 48 hours thereafter. Petitioner shall furnish details of his Aadhaar Card, Telephone Number, E-mail, PAN

Card, bank Account Number, if any. The petitioner shall surrender his passport to the learned Trial Court. In the event he does not hold any passport, he shall file an affidavit to that effect before the learned Trial Court;

vii) The petitioner shall not indulge in any criminal activities. It is made clear that in case the petitioner is arraigned as an accused in future in any FIR, then this bail is liable to be cancelled. It is open for the Investigating Agency to move appropriate application in that regard. This shall also be considered as a negative factor for consideration of his future bail application, if any.

5. Accordingly, the application for anticipatory bail is allowed and disposed of.
6. All parties shall act on the server copies of this order duly downloaded from the official *website* of this Court

(Raja Basu Chowdhury, J.)

(Soumen Sen, J.)