

**CIRCUIT BENCH OF CALCUTTA HIGH COURT
AT JALPAIGURI**

04.01.2023
Court No.1
(skb)

CRM(A) 437 OF 2022

In Re: An application for anticipatory bail under Section 438 of the Code of Criminal Procedure, 1973 in connection with Mathabahnga Police Station Case No. 32 of 2020 dated 17.01.2020 under Section 18 of the NDPS Act, 1985.

And

In the matter of: **Ajit Sarkar and another**

.**Petitioners.**

Mr. Hillol Saha Podder,
Ms. Mousumi Das

... For the Petitioners.

Mr. Aditi Shankar Chakraborty,
Mr. Sourav Ganguly

... For the State.

Mr. Sudipto Kumar Mazumdar, D.S.G.I.,
Mr. Ajoy Kumar Singhanian

... for the N.C.B.

Heard learned counsel appearing for the petitioners. It is submitted that NCB registered a case over the self same incident that took place on 15th January, 2020. Subsequently, over the selfsame incident State police also registered a case being Mathabahnga Police Station Case No. 32 of 2020 on 17th January, 2020.

Mr. Mazumdar representing the NCB submits that NCB did not register a case against the petitioner no.1 while the petitioner no.2 was enlarged on bail by the learned trial court.

The Report submitted by the NCB is taken on record.

While Mr. Ganguly representing the State submits that the petitioner no.1 though was not booked in the offence in the case registered by the NCB,

from the evidence collected in course of investigation, name of the petitioner no.1 transpired and State police took the petitioner no.1 in the case.

The submission of learned counsel representing the State clearly indicates that two cases were registered over the self same incident, one by NCB and other one by State police which is not permissible under the law, particularly, when the petitioner nos.1 and 2, according to learned counsel for the State, are partners in crime. Though Mr. Ganguly submits that the petitioners should approach this court under Section 482 of the Cr.P.C. to get the second FIR quashed, *prima facie*, it appears that the case registered by the State police is not maintainable under the law.

In such circumstances, we are inclined to extend the protection of Section 438 of the Cr.P.C. to the petitioners.

We accordingly direct that in the event of arrest, the petitioners shall be released on bail upon furnishing a bond of Rs.10,000/- (Rupees Ten Thousand) each with two sureties each of like amount to the satisfaction of the Arresting Officer and also comply with the conditions laid down under Section 438(2) of The Code of Criminal Procedure, 1973. The petitioners shall co-operate with the investigation and make themselves available for questioning to the Investigating Officer once in a fortnight until further orders. The petitioners shall also not intimidate any witnesses or tamper with any evidence in any manner whatsoever.

The application for anticipatory bail being CRM(A) 437 of 2022 is allowed and disposed of in terms of the above.

(SIDDHARTHA ROY CHOWDHURY, J.)

(MOUSHUMI BHATTACHARYA, J.)