

31.08.2023
Item no.19
Court No.01
Avijit Mitra

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

CRM (A) 717 of 2023

In Re:- An application for anticipatory bail under Section 438 of the Code of Criminal Procedure;

And

In Re : Bimal Biswas @ Bimal Kumar Biswas

.... petitioner

Mr. Sourav Ganguly

....for the petitioner

Mr. Nilay Chakraborty,

Mr. Kallol Nag

..... for the State

Apprehending arrest in connection with Mekhliganj Police Station Case No.262 of 2023 dated 12.08.2023 under Sections 20(b)(ii)(B)/21(b) of the Narcotic Drugs and Psychotropic Substances Act, the present application has been preferred.

Mr. Ganguly, learned advocate appearing for the petitioner submits that the petitioner along with his family left for Nawadwip on 12th August, 2023. He returned back to his house at 152, Panisala, Devi Colony, District-Coochbehar on 16th August, 2023. In support of such contention he has drawn our attention to the railway tickets as produced and as annexed to the application. After returning he came to learn that the police authorities have conducted a seizure on 12th August, 2023 from 15.35 hours to 19.40 hours.

Drawing our attention to the seizure list, Mr. Ganguly submits that the contraband substance was allegedly '*recovered*

from the firewood stake located at west side of domestic premises of Bimal Biswas and seized in presence of below side noted witnesses’. According to Mr. Ganguly, it would be explicit from the contents of the complaint that at the time of seizure none was available in the house. The firewood stack from which alleged contraband substance was recovered was on the west side of domestic premises. There was thus no recovery of the contraband substance from the petitioner’s residential house.

Mr. Chakraborty, learned advocate appearing for the State however, opposes the petitioner’s prayer and submits that the rigours of Section 37 of the NDPS Act are clearly attracted since contraband substance above commercial quantity has been recovered. In support of such contention he has drawn our attention to several documents in the case diary including the seizure list and the statement of witnesses, as recorded under Section 161 of the Code.

We have heard the learned advocates appearing for the respective parties and considered the materials in the case diary.

The place from where contraband substance was recovered is accessible to all and on the basis of such recovery, *prima facie*, the petitioner cannot be implicated. On the date and time of seizure, the petitioner’s house was also vacant. He is a family person residing with his family permanently at 152, Panisala, Devi Colony, Coochbehar.

In the backdrop of such sequence, it would not be appropriate to deny the petitioner's liberty, at this stage in spite of the statutory restrictions under Section 37 of the N.D.P.S Act moreso when, *prima facie*, there is no possibility that the petitioner will flee from justice. The petitioner has been able to demonstrate with reasonable certainty that he is not guilty of the offence and that he is not likely involved any offence committed while on bail.

In view thereof, his custodial interrogation is not necessary.

Accordingly, we direct that in the event of arrest, the petitioner namely, **Bimal Biswas @ Bimal Kumar Biswas** be released on bail upon furnishing a bond of Rs.10,000/- (Rupees Ten Thousand Only) each, with two sureties of like amount each, one of whom must be local, to the satisfaction of the arresting officer and subject to the conditions as laid down under Section 438(2) of the Code of Criminal Procedure, 1973 with a further condition that the petitioner shall meet the Investigating Officer of the case once a week until investigation is complete. The petitioner is further directed not to leave the jurisdiction of Mekhliganj Police Station till the investigation is complete. He shall not tamper with the evidence or intimidate the witnesses.

The application for anticipatory bail CRM (A) 717 of 2023 is disposed of.

All parties shall act on the server copies of this order duly downloaded from the official *website* of this Court.

(Lapita Banerji, J.)

(Tapabrata Chakraborty, J.)