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***Calcutta High Court
In the Circuit Bench at Jalpaiguri***

CRM (A) 723 of 2022

In Re:- An application for bail under Section 438 of the Code of Criminal Procedure filed on 30.11.2022 in connection with Phansidewa Police Station Case No. 378 of 2021 dated 13.08.2021 under Sections 21/22/22(b) of NDPS Act.

In the matter of : Md. Bachchu

... Petitioner

Ms. Sidhi Sethia,
Ms. Rima Sarkar

...for the Petitioner

Mr. Aditi Shankar Chakraborty,
Ms. Namrata Das

.....for the State.

Learned counsel for the petitioner submits that the other co-accused persons were granted bail primarily on the ground that a quantity of 205 grams of morphine, which was recovered from the accused persons, is not commercial. As such, the presumption of Section 37 of the NDPS Act does not arise.

The petitioner was, however, subsequently incriminated on the basis of charge sheet on the ground that the petitioner was the owner of the vehicle concerned.

Heard learned counsel for the State who opposes the prayer for anticipatory bail.

However, from the materials on record it is evident that the quantity of contraband materials seized does not fall within the purview of 'commercial quantity' and, as such, the premise of allegations made against the petitioner does not have any solid footing. As such, as rightly held by the previous Bench granting bail to the other co-accused, the presumption under Section 37 of the NDPS Act does not arise at all.

Accordingly, CRM (A) 723 of 2022 is allowed, thereby granting anticipatory bail to the petitioner on condition that the petitioner shall comply with the conditions as stipulated in Section 438(2) of the Code of Criminal Procedure.

In the event of arrest, the petitioner, namely, Md. Bachchu, shall be released on bail upon furnishing a bond of Rs.5,000/- (Rupees Five Thousand), with two sureties of like amount each, one of whom must be local, to the satisfaction of the learned Judge, Special Court (under NDPS Act) at Siliguri and on further condition that the petitioner shall, in such event, meet the Investigating Officer once in a fortnight.

CRM (A) 723 of 2022 is, accordingly, disposed of.

(Sabyasachi Bhattacharyya, J.)

(Rai Chattopadhyay, J.)

