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

CRM (A) 797 of 2022

In Re:- An application for anticipatory bail under Section 438 of the Code of Criminal Procedure filed on 23.12.2022 in connection with Bagdogra Police Station Case No. 102 of 2022 dated 15.02.2022 under Sections 21(c) of the NDPS Act.

In the matter of : Abhishek Chettri @ Suman Chhetri
... petitioner

Mr. Rima Sarkar,
Mr. Sidhi Sethia

...for the petitioner

Mr. Abhijit Sarkar,
Mr. Tapan Bhattacharjee

.....for the State.

Learned counsel appearing for the petitioner argues that the petitioner, who is one Suman Chhetri, is sought to be framed on charges under the NDPS Act without any material basis for the same. By placing reliance on documents of identity, annexed to the present petition, learned counsel for the petitioner reiterates that the petitioner has been named as 'Suman Chhetri' everywhere and, as such, under the pretext that the petitioner is also named as 'Abhishek Chettri', the petitioner cannot be arrested.

Learned counsel for the State opposes the prayer for anticipatory bail and submits that there were three perpetrators, out of them, one had been fled. The other two

accused persons are in custody. Moreover the address of the fleeing person also tallies with that of the present petitioner. Although there may be apparent discrepancy in the nomenclature of the said accused, it is submitted that the accused person and the present petitioner are identical. Since the case is one under NDPS Act, it is submitted that presumption under Section 37 of the NDPS Act applies.

Heard learned counsel for the parties.

It transpires that although charge sheet has been submitted and the petitioner has annexed documents to indicate that the petitioner is named 'Suman', we find sufficient materials to cast primary burden of proof on the petitioner under Section 37 of the NDPS Act to prove his innocence inasmuch as the surrounding circumstances of the arrest indicate involvement of the petitioner as well.

However, we do not find sufficient reasons to grant anticipatory bail to the petitioner at this stage.

Accordingly, CRM (A) 797 of 2022 is dismissed.

(Sabyasachi Bhattacharyya, J.)

(Rai Chattopadhyay, J.)