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Allowed

IN THE HIGH COURT AT CALCUTTA
Circuit Bench at Jalpaiguri

C.R.M. (A) No. 952 of 2023

In Re:- An application for anticipatory bail under Section 438 of the Code of Criminal Procedure in connection with Kotwali Police Station Case No. 654 of 2023 dated 31.08.2023 under Section 27(b)(11) of Drugs & Cosmetics Act.

And

In Re : Dipak Roy @ Deepak @ Tengra petitioner

Mr. Jaydeep Kanta Bhowmik

Mr. Sayantan Bhowmik

.....for the petitioner

Mr. Aditi Shankar Chakraborty, learned APP

Mr. Tapan Bhattacharjee

Mr. Biswarup Roy

....for the State

1. Report submitted in Court is placed on record.

2. From the report it appears that the seized item i.e. Tydol-Tapentadol tablets is not a manufactured drug or psychotropic substance. Learned Counsel for the petitioner also relies on an unreported decision of the High Court of Jammu & Kashmir and Ladakh at Srinagar in *Khurshid Ahmad Dar vs. Union Territory of J & K*¹.

¹ CRM(M) No. 251 of 2020 in connection with Bail Application No. 16 of 2021 dated 29.03.2022

3. We have also perused the report submitted by the Superintendent of Police, Jalpaiguri wherein it is, inter alia, stated as follows :

“The seized Tydol-Tapentadol tablets is not narcotic drugs and psychotropic substances as per schedule of NDPS Act 1985, which is used as pain killer and the same was mentioned in the complaint of BSF official also.”

4. Perusal of the schedule appended to the NDPS Act, 1985 shows Tapentadol is not listed as narcotic substance or psychotropic substance or a manufactured drug. Under such circumstances, we are of the opinion restrictions under Section 37 of the NDPS Act shall not apply to the facts of the case. Contraband article has already been seized and there is substantial progress of investigation. Under such circumstances, we are of the opinion progress of investigation would not require custodial interrogation but petitioner requires to co-operate with investigation in accordance with law.

5. Accordingly, we direct that in the event of arrest the petitioner shall be released on bail upon furnishing a bond of Rs.10,000/- with two sureties of like amount each, to the satisfaction of the arresting officer and also be subject to the conditions as laid down under Section 438(2) of the Code of Criminal Procedure, 1973 and on condition that he shall appear before the court below and pray for regular bail within a period

of four weeks from date and on further condition that the petitioner shall meet the investigating officer once in a week until further orders.

6. The application for anticipatory bail is, thus, allowed.

(Apurba Sinha Ray, J.)

(Joymalya Bagchi, J.)