

24.01.2024

Serial no. 333

Anticipatory bail

[Rejected]

2d

CRM (A) 177 of 2024

*In re : An Application for **Anticipatory Bail** under Section **438** of the Code of Criminal Procedure in connection with **Gangarampur** Police Station Case No. **538** of **2023** dated **24.11.2023** under Sections **21(C)/25/27A/29** of the NDPS Act, 1985..*

-And-

In the matter of : **Gosai Roy**

... ..**Petitioner**

Mr. Sekhar Kr. Basu, sr adv.

Mr. Abir Ranjan Neogi,

Mr. Karan Bapuli, Advocates

... ... For the Petitioner

Mr. Debasish Roy, PP

Ms. Rituparna De Ghose, Advocates

... ...For the State

Petitioner prays for anticipatory bail.

Learned senior advocate appearing for the petitioner submits that nothing was recovered from the possession of the petitioner. Police are proceeding on the basis of the statement of the co-accused made while in custody. He relies upon **(2021) 2 SCC (Cri) 246 [Tofan Singh vs. State of Tamil Nadu]** in support of his contention that the statement recorded under Section 67 of the NDPS Act, 1985 cannot be used as a confessional statement in the trial of an offence.

Learned advocate for the State submits that since such statement cannot be used at the trial, therefore, such statement cannot also be used as against the petitioner in the course of investigation.

Learned advocate for the State submits that there are call detail recording between the petitioner and the person arrested with the commercial quantity of narcotics.

Tofan Singh (Supra) is of the view that the statement recorded under Section 67 of the NDPS Act cannot be used as a confessional statement in the trial of an offence under such Act.

In the facts of the present case, police are proceeding not only on the basis of the statement of the co-accused made while in custody but also on the basis of the electronic evidence which suggest that there was nexus between the petitioner and the person arrested with the commercial quantity of narcotics. There are call details recording between the petitioner and co-accused.

In such circumstances, we are of the view that the petitioner is unable to overcome the restrictions under Section 37 of the NDPS Act, 1985.

Consequently, we are unable to grant anticipatory bail to the petitioner.

Prayer for anticipatory bail of the petitioner is **rejected**.

CRM (A) 177 of 2024 is dismissed.

(Debangsu Basak, J.)

(Md. Shabbar Rashidi, J.)