

10.06.2024
Court No.29
Item No. 43
Allowed

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CRM (A) 1787 of 2024

In Re:- An application for anticipatory bail under section 438 of the Code of Criminal Procedure in connection with Kaliachak Police Station Case No. 101 of 2024 dated 01.02.2024 corresponding to GDE No. 1004 and dated 31.01.2024 under Sections 21(c)/25/27A/29 of the Narcotics Drugs and Psychotropic Substances Act, 1985.

And

In Re: **Ismile Hossain @ Ismail Hossain @ Ismail**
Petitioner

Mr. Kalidas Saha
Ms. Mandira Mandal

For the Petitioner

Mr. Rana Mukherjee, Ld. APP
Mr. Nazmul Touhid

For the State

1. Learned counsel for the petitioner submits that the petitioner is innocent and he has been falsely implicated in the instant case. The name of the petitioner transpires from the statement of the co-accused before the police officer, which is inadmissible in evidence.
2. Learned counsel for the prosecution has referred to the earlier order passed by a coordinate bench on 22nd May, 2024 in which the State prayed for time to place materials regarding call details between the accused and the present petitioner. Mr. Rana Mukherjee, learned APP, appearing on behalf of the State has submitted that there has been 62 phone calls exchanged between the co-accused and the petitioner prior to the statement being recorded by the police officer soon after the arrest of the petitioner. Mr. Mukherjee has submitted that this fact was not known to the I.O when a coordinate bench considered the prayer for anticipatory

bail in the case of Firoj Sk. @ Nayem Sk. passed in CRM (NDPS) 631 of 2024 on 09.04.2024 in connection with same police station along with same case number. Moreover, the interrogation of the petitioner is necessary to unearth the truth.

3. We have considered the materials on record. The complicity of the petitioner has transpired from the statement of the co-accused before the police officer, which is inadmissible in evidence. The nature of conversation between the co-accused and the petitioner is the matter to be considered at the appropriate stage.
4. In view of the above, we are of the considered view that present petitioner is successful to make out a case for enlargement of anticipatory bail relaxing the statutory restrictions as provided under Section 37 of the NDPS Act.
5. Accordingly, we direct that in the event of arrest, the petitioner namely, **Ismile Hossain @ Ismail Hossain @ Ismail** shall be released on bail upon furnishing a bond of Rs.10,000/-, with two registered sureties of like amount each, subject to the satisfaction of the Arresting Officer and also to comply with the conditions as laid down in Section 438(2) of the Code of Criminal Procedure, 1973. The petitioner shall meet the Investigating Officer twice in a week till the submission of the final report and shall not leave the District Malda without express leave of the jurisdictional Court. The petitioner shall appear before the jurisdictional Court within two weeks from date. The petitioner shall submit Aadhaar Card, Voter Identity Card and to the I.O. within two weeks from date which shall be retained till the submission of final report. In the event he does not have a Pass-port he should file an affidavit duly affirmed to that effect and

submit it to the I.O within two weeks from date. In the event of non-compliance of any of the conditions, the anticipatory bail shall stand automatically cancelled without any further reference to this Court.

6. Accordingly, the prayer for anticipatory bail of the petitioner is allowed and the same is accordingly disposed of.
7. All parties shall act on the server copies of this order duly downloaded from the official *website* of this Court.

(Soumen Sen, J)

(Uday Kumar , J)