

Court No. 29
(266041)

CRM (A) 2629 of 2024

05.08.2024

(A 35)

(S. Banerjee)

(Allowed)

In re: An application for anticipatory bail under Section 438 of the Code of Criminal Procedure corresponding to Section 482 of the Bharatiya Nagarik Suraksha Sanhita in connection with Suti Police Station Case No. 76 of 2024 dated 29.01.2024 under Sections 21(a)/29 of the NDPS Act, 1985 and Section 13/14 of Foreigners Act, 1946 and Section 18(1)/19 of Bengal Excise Act, 1909 read with Section 46A(c) of B.E. Act, pending before the learned Sessions Judge, Murshidabad at Berhampore.

And

In the matter of: **Mosiul Hoque**

...petitioner

Mr. Arnab Chatterjee
Mr. Anisur Rahaman

... for the petitioner

Mr. Anindya Sundar Chatterjee

... for the State

1. Heard the learned counsel for the parties.
2. Learned counsel for the petitioner submits that the petitioner is innocent and has been falsely implicated.
3. It is submitted that there may be wrong identification of the petitioner by the investigating agency as he has no past history and he never dealt with any narcotic substance.
4. Learned counsel for the State in opposing the prayer has referred to statement of the two co-accused recorded under Section 161 Cr.P.C. during their custody and submits that they have revealed the name of the petitioner.

5. It appears from the case diary that other co-accused have named one Masu Sk.; and the name of the petitioner is Mosiul Hoque, son of Israil Sk. It may be a case of wrong identity. Moreover, even if it is assumed that Masu Sk. and Mosiul Hoque are one and same person, he cannot be arrested on the basis of the statement of a co-accused in police custody and in view thereof, the petitioner is able to rebut the presumption under Section 37 of NDPS Act.
6. Charge-sheet has already been filed.
7. Accordingly, we direct that in the event of arrest, the petitioner (Mosiul Hoque) shall be released on bail upon furnishing a bond of Rs. 10,000/- with two sureties of like amount, one of whom must be local, to the satisfaction of the arresting officer and subject to the conditions as laid down under Section 438(2) of the Code of Criminal Procedure, 1973, corresponding to Section 482(2) of the Bharatiya Nagarik Suraksha Sanhita, 2023.
8. The petitioner shall appear before the learned Sessions Judge, Murshidabad at Berhampore, under NDPS Act, within two weeks from date and shall appear on every date before the aforesaid court on and from the date fixed for appearance of the accused.
9. 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.

10. Accordingly, the application for anticipatory bail is allowed.

11. All parties shall act on the server copy of this order duly downloaded from the official website of this court.

(Uday Kumar, J.)

(Soumen Sen, J.)