

20.08.2024

Court No.29

Item No.38

Allowed

ar

CRM (A) 2883 of 2024

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, 2023 in connection with Goalpokher Police Station Case No. 643 of 2023 dated 27.11.2023 corresponding to N.D.P.S Case No. 39 of 2023 under Sections 21(C)/29 of the Narcotic Drugs and Psychotropic Substances Act.

And

In Re: **Habibul @ Habib**

Petitioner

Mr. Navanil De

Mr. Srinjan Ghosh

For the Petitioner

Mr. Saryati Dutta

Ms. Pallalvi Priyadarshee

For the State

1. Claiming parity with co-accused, Nijamuddin, who was granted anticipatory bail on 6th August, 2024 in CRM (A) 2681 of 2024, a prayer for anticipatory bail has been made.
2. Learned counsel for the State in opposing the prayer for anticipatory bail has submitted that although the petitioner stands on the same footing as that of Nijamuddin, but he has been declared as proclaimed offender. Our attention has been drawn to the Order no. 16 of 2024 dated 25th June, 2024 by which the Judge, Special Court under NDPS Act directed WP& A(appearance) against the accused Nijamuddin. Nijamuddin is presently on bail. However, it has been fairly conceded by the State that the said order was ex facie illegal as no satisfaction was recorded by the learned Special Judge before proclamation and moreover 30 days have not been given to the

petitioner to appear. In default whereof, he could have been declared as a proclaimed offender, although the petitioner did not challenge the said order.

3. However, having regard to the fact that it is contrary to law and the right under Section 438 Cr.P.C cannot be set at naught when the Court finds such serious procedural irregularity, we are inclined to accept the petition.

4. Considering the materials available in the case diary and the fact that the name of the petitioner transpired from the statement of the co-accused during police custody and this fact has not been disputed by the State, we are of the view that the petitioner has been able to rebut the statutory presumptions under Section 37 of the NDPS Act. Moreover, the charge-sheet has already been filed and the petitioner stands on the same footing as that of Nijamuddin is not also disputed on behalf of the State, we are of the view that the custodial interrogation of the petitioner is not necessary.

5. Accordingly, we direct that in the event of arrest, the petitioner, namely, **Habibul @ Habib**, shall be released on bail upon furnishing a bond of Rs.10,000/-, with two sureties of like amount each, one of whom must be local, to the satisfaction of the arresting officer and also 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 BNSS, 2023. It is further directed that the petitioner shall appear before the learned Additional District and Sessions Judge cum Judge (NDPS Act), 1st Court at Raiganj, Uttar Dinajpur in connection with Special NDPS Case No.39 of 2023 within two weeks from date.

6. It is further directed that the petitioner shall appear on each and every date of hearing before the learned Special Judge under NDPS Act on and from the date fixed for appearance of the accused and in default, the trial Court will

pass appropriate order to secure the presence of the petitioner in court including cancelling the anticipatory bail granted without further reference to this court.

7. Accordingly, the prayer for anticipatory bail of the petitioner is allowed and the same is accordingly disposed of.

8. 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)