

06.09.2024

Court No.29
Item No. 14

BM/Aloke

CRM (A) 3134 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 Baishnabnagar P.S. Case No. 717 of 2020 dated 22.12.2020 under Sections 20(a)(c) of NDPS Act, 1985, corresponding to Special Case No. 104 of 2020, pending before the learned Additional District & Sessions Judge, 3rd Court, Malda being the learned Judge, Special Court under the NDPS Act.

And

In Re: Prokash Sarkar @ Prakash Chandra Sarkar & Ors.

Petitioners

Mr. Shibaji Kr. Das
Mr. Dipyendu Sarkar
Ms. Debalina De

... For the Petitioners

Mr. Prasun Kr. Dutta
Ms. Puspita Saha

... For the State

1. Heard the learned counsel for the parties.
2. Learned counsel for the petitioners submits that the petitioners are innocent and they have been falsely implicated.
3. It is submitted that the land over which the alleged cannabis cultivation had taken place are not the plots of land belonging to the petitioners as the land record would reveal and the Investigating Officer has also taken note of the said fact in the charge-sheet, the petitioners are entitled to anticipatory bail.
4. The learned counsel appearing of the State in opposing the prayer for anticipatory bail has produced the case diary.
5. Considering the materials available in the case diary and the nature of the complicity of the alleged commission of offence and also having regard to the fact that prima facie the land over which it is alleged that the cultivation of cannabis had taken place do not belong to the petitioners, we are of the view

that the petitioners are able to rebut the presumption of Section 37 of the NDPS Act, accordingly we are inclined to grant anticipatory bail to the petitioners.

6. Accordingly, we direct that in the event of arrest the petitioners, namely, **Prokash Sarkar @ Prakash Chandra Sarkar, Naresh Chandra Sarkar, Mrinmoy Sarkar, Ratan Sarkar, Asim Kumar Sarkar @ Ashim Sarkar, Sudhir Chandra Sarkar @ Sudhir Sarkar, Jhatu Sk., Sekh Mahammad @ Sk. Mohammad, Sadek Sekh @ Sadek Sk., Ekramul Hoque, Jeker Ali @ Jeker Sk, Narayan Mandal @ Mondal @ Narayan Chandra Mondal and Akhil Sarkar @ Akhil Kumar Sarkar** shall be released on bail upon furnishing a bond of Rs.10,000/- each, with two sureties of like amount each, one of whom must be local, to the satisfaction of the learned Additional District & Sessions Judge, 3rd Court, Malda being the learned Judge, Special Court under the NDPS Act, subject to conditions as laid down under Section 438(2) of the Code of Criminal Procedure and subject to further condition that the petitioners shall appear before the trial Court within two weeks from date thereafter on each and every date of hearing until further orders.
7. In the event the petitioners fail to appear before the trial Court without any justifiable cause, the trial Court shall be at liberty to cancel their bail in accordance with law without any further reference to this Court.
8. Accordingly, the prayer for anticipatory bail of the petitioners is allowed.
9. CRM (A) 3134 of 2024 is, thus, disposed of.
10. All parties shall act on the server copies of this order duly downloaded from the official website of this Court.

(Soumen Sen, J.)

(Shampa Dutt (Paul), J.)