

01.02.2024

DL.40

Court No.29

(AD)

(Partly
Allowed)

C.R.M. (A) 5126 of 2023

In Re: - An application for anticipatory bail under Section 438 of the Code of Criminal Procedure in connection with **Hanskhali** Police Station Case No. **159 of 2023** dated **17.02.2023** under Section **21(c)** of the Narcotic Drugs and Psychotropic Substances Act and under Sections **13/14** of Foreigners Act read with under Section **11D** of the Prevention of Cruelty to Animals Act. (NDPS Case No.13 of 2023).

And

In the matter of: **Naser Dhali @ Nasir Dhali & Anr.**

....petitioners.

Mr. Partha Sarathi Mondal

...for the petitioners.

Mr. Soumik Ganguli

...for the State.

Leave granted to the learned Advocate for the petitioners to correct the cause-title.

Report as called for by the order dated January 24, 2024 filed in Court be taken on record.

Report speaks of criminal antecedents so far as the petitioner no.1 (Naser Dhali @ Nasir Dhali) is concerned.

Police apparently are proceedings against both the petitioners on the basis of the statement of the co-accused made while in custody.

Report does not speak of the petitioners being foreign nationals.

In such circumstances, we are of the view that the petitioner no.2 (Hatim Mondal) is able to overcome the restrictions under Section 37 of the NDPS Act, 1985. Consequently, we grant anticipatory bail to him.

Accordingly, we direct that in the event of arrest, the petitioner no.2 shall be released on bail upon furnishing a Bond of

Rs.10,000/- (Rupees Ten Thousand Only), with two sureties of like amount each 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 and on further condition that the petitioner no.2 will report before the Investigating Officer once a week till the conclusion of the investigation and on condition that the petitioner no.2 shall appear on every date before the jurisdictional Court on and from the date fixed for appearance of the accused and in default, the jurisdictional Court will pass appropriate order to secure the presence of the petitioner no.2 in Court including cancelling the anticipatory bail granted without further reference to this Court.

The prayer for anticipatory bail of the petitioner no.2 (Hatim Mondal) is allowed.

So far as the petitioner no.1 is concerned, by reason of notification of him being a habitual offender and a police case involving, *inter alia*, the NDPS Act, 1985 being pending against him, we are of the view that the petitioner no.1 is unable to overcome the restrictions under Section 37 of the NDPS Act, 1985. Consequently, we are unable to grant him anticipatory bail.

Accordingly, the prayer for anticipatory bail of the petitioner no.1(Naser Dhali @ Nasir Dhali) is rejected.

C.R.M. (A) 5126 of 2023 is disposed of.

(Debangsu Basak, J.)

(Md. Shabbar Rashidi, J.)