

JPD-220
Ct No.01
02.08.2024
TN

Calcutta High Court
In The Circuit Bench at Jalpaiguri
Appellate Jurisdiction

CRM (A) 507 of 2024

In Re: - An application for anticipatory bail under Section 438 of the Code of Criminal Procedure, 1973 in connection with **Naxalbari** Police Station Case No. **05** of **2024** dated **14.01.2024** under Sections **21(b)/22(b)/29** of the **NDPS Act, 1985**.

And

In the matter of: **Md. Nak @ Nek Khan**

.... petitioner

Ms. Rima Sarkar,
Ms. Suparna Paul

... for the petitioner

Mr. Nilay Chakraborty, Ld. APP,
Mr. Abhijit Sarkar,
Mr. Kallol Nag

... for the State

1. Learned counsel for the petitioner argues that only intermediate quantity of brown sugar was recovered in the case, that too, not from the petitioner. It is further submitted that the petitioner's name has transpired due to the statement of a co-accused person who himself has been granted bail.
2. Learned counsel for the State opposes the prayer for anticipatory bail and submits that the petitioner has criminal antecedents, in view of pendency of a different investigation with regard to the petitioner.

3. Upon hearing learned counsel, we find that a balance has to be struck between the case made out by the petitioner and the State. The factors which go in favour of the petitioner are that the quantity recovered was intermediate (which obviates the applicability of Section 37, NDPS Act), that the petitioner has been incriminated primarily on the basis of the statement of a co-accused person which might not have much probative value in trial and that the said co-accused person himself has been granted bail. On the other hand, what stands against the petitioner is only that there are criminal antecedents of the petitioner.
4. If we explore the expression “criminal antecedents”, there can be two facets of the same. In certain cases, the accused person might have been convicted on a previous offence and in others, the accused might still be undergoing investigation and/or trial. In the present case, we find that although the petitioner has been named in a previous offence, no conviction has yet been handed out to the petitioner.
5. Thus, striking a balance between the three important considerations which go in favour of the petitioner and the one that goes against him, we are inclined to grant the benefit of doubt to the petitioner, particularly on the ground of parity since the co-accused person, on whose statement the petitioner was arrested, himself has been granted bail.

- 6.** Thus, CRM (A) 507 of 2024 is allowed, thereby granting anticipatory bail to the petitioner on condition that the petitioner shall comply with the stipulations in Section 438(2) of the Code of Criminal Procedure.
- 7.** In the event of arrest, the petitioner shall be released on bail upon furnishing 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.
- 8.** Furthermore, the petitioner shall not leave the territorial jurisdiction of the trial court during the period of trial and make himself available as and when required during investigation and subsequent trial.

(Sabyasachi Bhattacharyya, J.)

(Prasenjit Biswas, J.)