

13.02.2025
11.
Ct. No. 28
SG
[Allowed]

C. R. M. (A) 207 of 2025

In Re: An application for anticipatory bail under Section 482 of the Bharatiya Nagarik Suraksha Sanhita, 2023 in connection with NDPS Case No. N 02/2023 arising out of N.C.B. Crime No. 02/NCB/KOL/2023 dated 07.01.2023 under Section 8(c) read with Sections 20(b)(ii)(c)/21(c)/35/54 of NDPS Act.

Nemai Ghosh
Vs.
Union of India

Mr. Ayan Bhattacharya, Sr. Adv.
Mr. Antarikhya Basu, Adv.
Ms. Madhumita Basak,
Ms. Ritu Das.

.... For the petitioner

Mr. Gauranga Kumar Das, Adv.
Mr. Sagar Saha, Adv.

.... For the NCB

1. Petitioner has renewed his prayer for pre-arrest bail. He contends no narcotics was recovered from his possession. He has been falsely implicated in a series of cases. Earlier prayer for pre-arrest bail was rejected on the ground that he did not respond to notices under Section 67 of NDPS Act and co-operate during investigation. Learned Senior Counsel contends during hearing of the earlier application, communication dated 23.03.2024 sent to the department in response to the summons served on his client had not been placed before this Court. Relying on this document he submits his client had responded to the notice and co-operated during investigation. Accordingly, he prays for reconsideration of the earlier order in the light of the additional materials placed before this Court.

2. In view of the aforesaid submission, we called upon learned Counsel for NCB to report whether the letter dated 23.03.2024 categorically denying involvement of the petitioner in narcotics activity was served on the department. Learned Counsel places on record document which shows the said letter had been duly received. He, however, submits inspite of issuance of six notices petitioner had not physically attended interrogation.

3. We have considered the materials on record. No narcotics was recovered from petitioner. His complicity had transpired from statement of co-accused before the enquiring officer under Section 67 of the NDPS Act which are inadmissible in law as per ***Tofan Singh vs. State of Tamil Nadu***¹. His earlier prayer for pre-arrest bail was turned down on the premise he had not responded to notices under Section 67 of the NDPS Act. Presently, petitioner has placed on record a letter dated 23.03.2024 wherein he categorically denied his involvement in the narcotics trade and disclosed he has bona fide business through which he earns his livelihood. Nothing is placed on record to show the enquiring officer had verified the contents of the said letter. On the other hand, he mechanically issued another notice dated 21.05.2024 which, however, was not responded. Upon query from the Bench learned Counsel is unable to enlighten us whether further investigation is in progress or such process would entail petitioner's custodial interrogation.

¹ (2021) 4 SCC 1

4. Given this situation, we hold that investigation in the case is complete and no credible and/or legally admissible evidence connecting the petitioner is placed record. Earlier plea for pre-arrest bail had been turned down on the sole ground that petitioner had not responded to notices under Section 67 of the NDPS Act. Presently, petitioner has placed on record letter dated 23.03.2014 wherein he had explained his legitimate business activities as his source of livelihood and denied his involvement in the alleged narcotics trade. No investigation was undertaken by NCB with regard to the information made available to them by the petitioner in the said letter. NCB does not propose to undertake any further investigation in the matter also.

5. In this backdrop, we are of the opinion subsequent material, namely, letter dated 23.03.2024 in response to notice under Section 67 of the NDPS Act supplying information with regard to petitioner's legitimate source of income and bona fide business activity changes the profile of the case vis-à-vis his availability and cooperation with the investigation.

6. Under such circumstances, we are inclined to reconsider the prayer for pre-arrest bail and allow the present application for anticipatory bail.

7. Application for anticipatory bail is allowed.

8. Accordingly, we direct that in the event of arrest, the petitioner viz., **Nemai Ghosh** be released on bail upon furnishing a bond of Rs.10,000/-, 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 482(2) of the Bharatiya

Nagarik Suraksha Sanhita, 2023. He shall appear before the jurisdictional court and pray for regular bail within four weeks from date.

9. Application for anticipatory bail is, thus, disposed of.

(Gaurang Kanth, J.)

(Joymalya Bagchi, J.)