

14.11.2025
Court No.28
Item No.18
tbsr
Allowed

CRM (A) 3147 of 2025

In Re: - An application for anticipatory bail under Section 438 of the Code of Criminal Procedure, 1973 corresponding to Section 482 of the Bharatiya Nagarik Suraksha Sanhita, 2023 in connection with **Hili** P.S. Case No.**145 of 2023** dated **18.08.2023** under Sections **21(c)/22(c)/23(c)/27A** of the NDPS Act, 1985 read with Section 46A(b) of Bengal Excise Act charge sheet submitted under Sections 21(C)/22(C)/23(C)/27A of the NDPS Act, 1985 and read with Section 46A(b) of Bengal Excise Act.

And

In the matter of: Sandip Kundu

....Petitioner.

Mr. Kaushik Choudhury
....for the petitioner

Mr. Rudradipta Nandy
Mr. Ashoke Das
....for the State

Learned counsel appearing on behalf of the petitioner submits as follows. The only incriminating material available against the present petitioner is the statement of a co-accused, which is inadmissible in evidence. Earlier, a co-accused standing on the same footing was granted anticipatory bail by this Court on 22.11.2023 in CRM (A) 4491 of 2023. By referring to this, the Hon'ble Apex Court thereafter granted anticipatory bail to another co-accused on 18.09.2025 in SLP (Criminal) 46451 of 2025. In case of the co-accused who was granted anticipatory by the Hon'ble Supreme Court, proclamation had been issued like in the present case. It is settled law that an issuance of proclamation is not an absolute bar to the grant of anticipatory bail. It is significant to note that two co-accused obtained anticipatory bail were all acquitted from the charges.

Learned counsel appearing on behalf of the State opposes the prayer for anticipatory bail. It does not appear that the question of proclamation having been issued was raised before the Hon'ble Apex Court.

It appears that the only material available against the petitioner is the statement of a co-accused, which is not admissible in evidence. Therefore, the petitioner has been able to rebut the restriction contained in Section 37 of the NDPS Act.

In view of the materials available in the case diary, the fact that similarly circumstanced co-accused was granted anticipatory bail by this Court, another similarly circumstanced co-accused against whom proclamation had been issued was granted anticipatory bail by the Hon'ble Supreme Court and the fact that charge sheet has been submitted, I am inclined to grant anticipatory bail to the petitioner.

In the event of arrest, the petitioner 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 be 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 and on further condition that the petitioner shall surrender before the learned trial Court within four weeks and pray for bail and shall regularly attend the trial Court.

The application for anticipatory bail is, thus, allowed.

Urgent photostat certified copy of this order may be supplied to the parties expeditiously, if applied for.

(Jay Sengupta, J.)