

21. 10.04.2025
Court
No.1 (Papiya)
(allowed)

**CALCUTTA HIGH COURT
IN THE CIRCUIT BENCH AT JALPAIGURI
APPELLATE SIDE**

CRM (A) 269 of 2025

In Re: - An application for Bail under Section 482 of the Bharatiya
Nagarik Suraksha Sanhita, 2023 in connection with **Jaigaon
Police Station Case No. 290 of 2023** dated **19/12/2023** under
Sections **21(C)/29** of the NDPS Act, 1985.
And

In the matter of: - **Shanu Lama @ Sanu Lama**
...petitioner.

Mr. Subhankar Dutta, Adv.
...for the petitioner.

Mr. Aditi Shankar Chakraborty. Ld. APP.
Mr. Sourav Ganguly, Adv.
...for the State.

1. The petitioner prays for anticipatory bail. He says that there was no recovery of narcotics from him. His implication is solely on the basis of statement made by the prime accused from whom seizure of commercial quantity of contraband items was made. Such statement is inadmissible in law. Charge sheet has been submitted upon completion of Investigation. He prays for pre-arrest bail.
2. Learned State Advocate opposes the prayer. However, he fairly admits that there was no recovery from this petitioner and he has been implicated solely on the basis of statement made by a co-accused person.

3. Statement of a co-accused person made before the police may not have any evidentiary value. To my query as to whether or not there is any other material like Call Details Report or money-trail linking this petitioner to the alleged offence, learned State Counsel, in his usual fairness, says that there is no such material in the case diary.
4. In the aforesaid facts and circumstances, I am of the opinion that the petitioner has been able to tide over the restrictions in Section 37 of the NDPS Act.
5. Hence, I am inclined to **allow** his prayer for anticipatory bail.
6. Accordingly, in the event of arrest, the petitioner, namely, **Shanu Lama @ Sanu Lama**, shall be released on bail upon furnishing a bond of Rs.10,000/- (Rupees Ten Thousand), with two sureties of like amount each, one of whom must be local, to the satisfaction of the arresting officer, and shall abide by the conditions laid down in Section 438(2) of the Code of Criminal Procedure/Section 482(2) of the Bharatiya Nagarik Suraksha Sanhita, 2023, until further orders and on further condition that the petitioner shall meet the Officer-in-Charge/Inspector-in-Charge of the concerned police station once in a fortnight and as and when call for, until further orders. Within seven days from date, the petitioner shall go and meet the Officer-in-Charge/Inspector-in-Charge of the concerned police station.
7. The application for anticipatory bail being CRM (A) 269 of 2025 is, thus, **allowed** and disposed of.

8. Before parting, I feel constrained to make a few observations. I see from the order dated March 19, 2025, recorded by the learned trial Court whereby the petitioner's prayer for anticipatory bail was rejected that the Special Public Prosecutor submitted before the learned Trial Court that there is no material on record against the accused **Shanu Lama** and his name has all of a sudden been inserted in the charge sheet by the Investigating Officer. It was further submitted that the name of **Shanu Lama** is not there in the statement of any witness recorded under Section 161 Cr.P.C. Even co-accused **Kishore Nagasia** did not disclose the name of the accused.
9. The aforesaid statement made by learned Special Public Prosecutor is palpably incorrect. I have seen the statement made by **Kishore Nagasia** recorded under Section 161 Cr.P.C.. He specifically says that the contraband item was supplied by this petitioner. It is an entirely different matter that such a statement may not be admissible in evidence by reason of the decision in **Tofan Singh v. State of Tamil Nadu, reported at (2021) 4 SCC 1**. However, the statement made by the learned Special Public Prosecutor before the learned Trial Court was completely misleading. The Public Prosecutors should act with more responsibility and with better preparation. Otherwise, the Criminal Justice Delivery System in the State will suffer badly. Let a copy of this order be sent to the Director of Public Prosecutor as well as to the District Magistrate, Alipurduar, by learned Registrar Circuit Bench at Jalpaiguri, High Court at Calcutta.

10. Criminal Section is directed to supply certified copies of this order to the parties, if applied for, upon compliance of all necessary formalities.

(Arijit Banerjee, J.)