

21.04.2026
Item no.06.
Court No.05.
KAUSHIK

**In the High Court at Calcutta
Circuit Bench at Jalpaiguri
Criminal Miscellaneous Jurisdiction**

CRM (A) 143 of 2026

In Re: An Application for Anticipatory Bail under Section 482 of the Bharatiya Nagarik Suraksha Sanhita, 2023 in connection with Sitalkuchi Police Station Case No. 584 of 2025 dated 25.11.2025 under Sections 20(b)(ii)(c)/ 25/29 of the NDPS Act.

And

In the matter of : Indrajit Sarkar & Anr.

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Mr. Hillol Saha Podder
.....for the Petitioner.

Mr. Nilay Chakraborty, learned APP
Mr. Biswarup Roy
.....for the State.

This is an application presented under Section 482 of the BNSS, 2023, seeking pre-arrest bail in connection with Sitalkuchi Police Station Case No. 584 of 2025 dated 25.11.2025, under Sections 20(b)(ii)(c)/25/29 of the NDPS Act.

Mr. Poddar, learned advocate appearing for the , submits that the are in no way connected with the alleged offence. He further submits that they reside separately, and the prosecution has miserably failed to bring any material to connect the with the alleged offences. He also submits that there is no CDR indicating any telephonic conversation between the and the principal accused, and that the have no criminal antecedents and are not involved in any money trail.

He further submits that, in similar cases, the Hon'ble Apex Court as well as this Hon'ble Court have extended the benefit under Section 482 of the BNSS in favour of the accused persons therein.

He relies upon the decision reported in (2022) 12 SCC 633 (State vs. Pallulabid Ahmad Arimutta & Anr.) and an unreported decision of the High Court of Judicature at Bombay, Nagpur Bench, in Criminal Application (ABA) No. 639 of 2025 (Tanmay Akhilesh Trivedi vs. The State of Maharashtra), and submits that the confessional statement of a co-accused, on the basis of which another accused is implicated, has no evidentiary value in the eye of law. He contends that, in the present case as well, the have been implicated solely on the basis of the confessional statement of the principal accused, which carries no evidentiary value in law. He further submits that, in a similar case, this Court has granted anticipatory bail to the accused. In support of such contention, he relies upon an unreported decision of a Coordinate Bench of this Court in CRM(A) 13 of 2026 (In Re: Dilip Barman).

Mr. Chakraborty, learned APP appearing for the State, along with Mr. Roy, learned advocate, submits that from the report submitted by the Investigating Officer, it would be evident that the accused person had, on several occasions, telephonic conversations with the principal accused at the relevant point of time. He further submits that a huge quantity of contraband article (ganja) has been recovered from the house of the present accused persons, and submits that this is not a fit case for grant of benefit under Section 482 of the BNSS. Mr. Chakraborty distinguished the decision of Pallulabid Ahmad Arimutta (supra) contending that this decision was rendered on an application for cancellation for bail and

considerations in respect of cancellation of bail and grant of anticipatory bail, according to him, are totally different. He also claims that the rest two decisions cited by the are also distinguishable on facts.

Heard the learned advocates appearing for the respective parties and perused the materials on record including the case diary and report of the investigating officer.

Following a recovery of 206.10 kgs of contraband article (ganja) from the house of accused Pradip Sarkar, the instant case was started. At the time of such recovery, the wife of Pradip Sarkar, namely Astami Sarkar, was present at the house. Thereafter, in the course of enquiry and on the basis of materials collected during investigation, the husband of the said Astami Sarkar and the present being the full blood brothers of Pradip Sarkar have been implicated in the case under reference. The record reveals that, by an order dated 24th March, 2026, a Coordinate Bench of this Court directed the Investigating Officer to file a report regarding any telephonic conversation between the and the principal accused at the relevant point of time, any money trail, or the criminal antecedents of the . In the report, it has been mentioned that between 1st October, 2025 and 25th November, 2025, the co-accused, namely Indrajit Sarkar, Biplab Sarkar, and Pradip Sarkar, had telephonic conversations with the prime accused, namely Astami Sarkar, on several occasions.

The learned advocate for the petitioner has raised the contention that the present petitioner resides in a separate mess. This Court afforded opportunity to substantiate such contention. However, despite such opportunity being given, no document has been produced to demonstrate

that the present would reside in a separate mess at the relevant point of time.

Indisputably, in case of in Tofan Singh vs. State of Tamal Nadu, 2021 4 SCC 1, that a confessional statement recorded under Section 67 of the NDPS Act will remain inadmissible in the trial of an offence under the NDPS Act. In Pallulabid Ahmad Arimutta (supra), the Hon'ble Apex Court while dealing with application for cancellation of bail held as follows:

“Having gone through the records along with the tabulated statement of the respondents submitted on behalf of the NCB and on carefully perusing the impugned orders [Pallulabid Ahamad Arimutta v. State,2019 SCCOnLineKar 3516], [Mohd. Afzal v. Union of India,2020 SCCOnLineKar 3433], [MuneesKavilParamabath v. State,2020 SCCOnLineKar 3431], [Abu Thahir v. State,2019 SCCOnLine Kar 3517], [Mohd. Afzal v. Union of India,2020 SCCOnLineKar 1294], [MuneesKavilParamabath v. State of Karnataka,2020 SCCOnLineKar 3432] passed in each case, it emerges that except for the voluntary statements of A-1 and A-2 in the first case and that of the respondents themselves recorded under Section 67 of the NDPS Act, it appears, prima facie, that no substantial material was available with the prosecution at the time of arrest to connect the respondents with the allegations levelled against them of indulging in drug trafficking. It has not been denied by the prosecution that except for the respondent in SLP (Crl.) No. 1569 of 2021, none of the other respondents were found to be in possession of commercial quantities of psychotropic substances, as contemplated under the NDPS Act...”

In the decision of *Tanmay Akhilesh Trivedi* (supra) also, the same proposition of law was reiterated, namely that a confessional statement of a co-accused made under Section 67 of the NDPS Act has no evidentiary value in the eye of law. With due respect, it may be stated that in the order in *Dilip Barman* (supra), no precedent has been laid down.

A decision is a precedent only on its own facts, as each case presents its distinct factual features. It is an authority for what it actually decides. Courts should not place reliance on decisions without examining how the factual matrix of the case at hand fits with that of the decision relied upon; such decisions cannot be applied blindly or mechanically. Even a slight difference in facts may lead to a different conclusion in the decision-making process. It is trite that a decision is binding not for its conclusion but for its ratio and the principles laid down therein. There is no scintilla of doubt regarding the binding nature of those decisions; however, they have no manner of application to the facts of the present case.

In the present case, a huge quantity of contraband article has been recovered from the house in which the also resides. As noted earlier, the present , who are brothers of Pradip Sarkar, have failed to produce any document to demonstrate that they were residing in separate mess.

In Section 37 of the NDPS Act, even in cases involving curtailment of personal liberty, the legislature mandates satisfaction of the twin conditions while deciding an application for bail or anticipatory bail. In *State by Inspector of Police vs. B. Ramu*, reported in 2024 SCC OnLine SC 4073, it was held that the grant of anticipatory bail in NDPS

cases is a serious matter and courts should be slow in granting anticipatory bail where commercial quantity is involved. Therefore, an order of anticipatory bail in an NDPS case involving commercial quantity of contraband articles cannot be granted on mere asking. It is well settled that the CDR details of the accused are an aspect to be examined at the stage of trial.

It is to be kept in mind that the confessional statement of a co-accused cannot be rejected at the threshold without considering whether the same is hit by Section 67 of the NDPS Act. Section 30 of the Evidence Act, corresponding to Section 24 of the Bharatiya Sakshya Adhiniyam, 2023, lays down that when more persons than one are being tried jointly for the same offence, and a confession made by one of such persons affecting himself or some of the others is proved, the Court may take into consideration such confession against the co-accused as well as against the person who makes the confession.

Therefore, based on the analysis and reasoning made in the foregoing paragraphs and taking note of the recovery of a huge quantity of contraband articles, and also noting that the investigation is at a nascent stage, it would not be appropriate to hold that the present petitioner has no connection with the alleged offence or that custodial interrogation of the petitioner is not necessary to unearth the truth.

In view of the above, the prayer for anticipatory bail cannot be entertained at this stage.

Accordingly, the application being CRM (A) 143 of 2026 seeking the pre-arrest bail is **dismissed**.

All parties shall act in terms of server copy of the order downloaded from the official website of this Court.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Partha Sarathi Chatterjee, J.)