Item No.-30 & 31
Ct No.07
26.11.2026
R.D Barua

Calcutta High Court
In The Circuit Bench at Jalpaiguri
Appellate Jurisdiction

CRM (A) 816 of 2026

In Re:- An application for Anticipatory Bail under Section 482 of the Bharatiya Nagarik Suraksha Sanhita, 2023 in connection with Dhupguri Police Station Case No.191 of 2025 dated 24.05.2025 under Sections 21(c)/25/29 of the Narcotic Drugs and Psychotropic Substances Act, 1985.

And

In the matter of: Kushal Saha @ Sanjiv Saha

...petitioner

CRM (A) 817 OF 2026

In Re:- An application for Anticipatory Bail under Section 482 of the Bharatiya Nagarik Suraksha Sanhita, 2023 in connection with Dhupguri Police Station Case No.191 of 2025 dated 24.05.2025 (GDE No.1262 of 2025) under Sections 21(c)/25/29 of the Narcotic Drugs and Psychotropic Substances Act, 1985.

And

In the matter of: Amitava Baran Das

.... Petitioner

Mr. Satadru Lahiri
Nr. Gourab Banerjee
Ms. Esha Acharya
Ms. Ipsita Saha

...for the petitioner.

Mr. Avrojyati Das, Ld. APP
Mr. Janardan Periwal, Junior P.P
Ms. Rajyashree Ghosh

... for the State

1. During arguments, learned counsel for the State seeks an adjournment after the Court expressed its opinion. The Court deprecates such sharp practice on the part of counsel.

2. The present applications have been filed by two different co-accused persons in respect of the selfsame F.I.R.

3. The allegation is that commercial quantity of cough syrup was recovered in different tranches from vehicles and godowns. The names of the petitioners in the respective applications were disclosed by one of the apprehended persons who was a truck driver carrying one of such tranches.

4. Learned counsel for the petitioners argues that the statement of a co-accused persons cannot be the basis for withholding the relief of bail and cites in that regard a Three-Judge Bench decision of the Hon'ble Supreme Court in *State (by NCB) Bengaluru Vs. Pallulabid Ahmad Arimutta and Another*, reported at *(2022) 12 SCC 633*, which in turn relied on *Tofan Singh Vs. State of T.N.*, reported at *(2021) 4 SCC 1*.

5. Learned counsel further submits that the petitioner in CRM (A) 817 OF 2026 holds a drug license and placed orders for bottles of cough syrups, in pursuance of which the consignment-in-question was coming.

6. It is argued that the possession of a drug license by the petitioner mitigates the rigour of the provisions of the NDPS Act.

7. In this regard, learned counsel cites *Subodh Kumar Sagar @ Subodh Kumar Sah Vs. The State of Bihar*, where the Hon'ble Supreme Court reiterated that where the accused is a license holder to run a medical shop, recovery of bottles of cough syrup

from his residence does not entail application of the rigours of Section 21(a) and Section 8(c) of the NDPS Act, 1985.

8. Learned counsel for the State seriously opposes the prayer for anticipatory bail and places reliance on a judgment of a learned Single Judge of the Allahabad High Court in *Varun Lat (Lath) vs. State of U.P.* reported at *2026 SCC OnLine All 13905*, where the Court held that the allegations therein pertained to dealing with codeine-based cough syrups in quantity far exceeding originally retailed transactions. The material collected during investigation, it was held, *prima facie* indicated dealing in a substantial quantity of the contraband substances through a chain in which the applicant was alleged to be a participant.

9. Learned counsel submits that, in the instant case, from the chain of events as disclosed by successive seizures of the bottles of cough syrup in question from different godowns, it is evident that the petitioners are involved in a racket of drug trafficking. It is further submitted that the serial numbers of bottles which were confiscated tally with the orders placed by the petitioner in CRM (A) 817 of 2026 and the wife of the petitioner in CRM (A) 816 of 2026, one Priti Saha, both having drug licences.

10. It is thus argued that in the event the petitioners are granted anticipatory bail, the investigation may suffer at this stage. Furthermore, it is argued that the rigours of the NDPS Act apply squarely to both the petitioners. It is further submitted by the State that some of the confiscations were made from vehicles, the

numbers of which did not tally with the numbers of vehicles given in the transit orders.

11. However, upon considering the submission of the parties, it transpires that the petitioners are entitled to anticipatory bail on several grounds.

12. First, as held by the Hon'ble Supreme Court in *Tofan Singh (supra)* and subsequently reiterated in *Pallulabid Ahmad Arimutta (supra)*, voluntary statements made by co-accused persons cannot form the basis of refusing bail/anticipatory bail.

13. In the present case, the sole connecting factor between the petitioners and the alleged offence is the statement of co-accused persons.

14. Secondly, as observed by the Hon'ble Supreme Court in a three Judge Bench decision in *Subodh Kumar Sagar (supra)*, since the petitioner in CRM(A) 817 of 2026 and the wife of the petitioner in CRM(A) 816 of 2026 hold drug licenses and in the present case, there is sufficient *prima facie* material to show that orders were placed by them for consignment of the very cough syrup bottles of which portions were confiscated, the rigours of the NDPS Act are diluted.

15. That apart, the mere fact that the confiscations allegedly took place from vehicles other than those mentioned in the transport challans, although may be punishable under other statutes, does

not constitute an offence *per se* under the NDPS Act or lead to any presumption of commission of offence under the said Act.

16. In such view of the matter, the foundational facts for applying the rigours of the NDPS Act are not attracted insofar as the petitioners are concerned.

17. Accordingly, CRM (A) 816 of 2026 and CRM (A) 817 of 2026 are allowed, thereby granting anticipatory bail to the respective petitioners therein.

18. In the event of arrest, the petitioners shall be released on bail upon furnishing bond of Rs.20,000/- for each of the petitioners, with two sureties of like amount, one of whom must be local, to the satisfaction of the learned Judge, Special Court (NDPS Act) at Jalpaiguri. The sureties may be common for both the petitioners. Moreover, the petitioners shall not leave the territorial limits of the district of Jalpaiguri and shall attend the trial, as and when the same commences, on each and every date thereof, and shall make themselves available and cooperate in the event there is any further investigation for the purpose of submitting any supplementary/additional charge sheet.

(Sabyasachi Bhattacharyya, J.)