21.12.2021
50 & 51
sdas
Allowed

C.R.M. 8411 of 2021
(via video conference)

In Re:- An application for anticipatory bail under Section 438 of the Code of Criminal Procedure in connection with Burrabazar Police Station Case No. 406 dated 30.12.2018 under Sections 120B/406/467/468/471/477A of the Indian Penal Code.

And

In Re : Hitangshu Kumar Chaki …… petitioner

with

C.R.M. 8412 of 2021
(via video conference)

In Re:- An application for anticipatory bail under Section 438 of the Code of Criminal Procedure in connection with Burrabazar Police Station Case No. 406 dated 30.12.2018 under Sections 120B/406/467/468/471/477A of the Indian Penal Code.

And

In Re : Ajit Banik …… petitioner

Mr. Sekhar Kumar Basu, Sr. Adv.
Mr. Debajyoti Deb
Mr. Shyamal Mondal
Mrs. Priti Paul
Ms. Sanjana Maitra
Mr. Sanjoy Kumar Das
…..for the petitioner
(in C.R.M. 8411 of 2021)

Mr. Milon Mukherjee, Sr. Adv.
Mr. Debajyoti Deb
Mr. Shyamal Mondal
Mrs. Priti Paul
Ms. Sanjana Maitra
Mr. Sanjoy Kumar Das
…..for the petitioner
(in C.R.M. 8412 of 2021)

Mr. Madhusudan Sur, learned APP
Mr. Dipankar Paramanick
....for the State
(in C.R.M. 8411 of 2021)

Mr. Sudip Ghosh
Mr. Bitasok Banerjee
....for the State
(in C.R.M. 8412 of 2021)

Mr. Debasish Roy
Mr. Ayan Bhattacharya
Mr. Pawan Kumar Gupta
Mr. Arnab Saha
Mr. Abhimanyu Bannerjee
Mr. Santanu Sett
....for the de-facto complainant
(in both the matters)

It is submitted by Mr. Basu, learned senior Counsel appearing for the petitioner, Hitangshu Kumar Chaki, in CRM No. 8411 of 2021 that the petitioner is a chartered accountant who had merely rendered his professional service to the company concerned. He has no way connected with the alleged transfer of licence from Teesta Torsa Chemicals Private Limited (hereinafter referred to former company) to M/s. Teesta Torsa Fertilisers Pvt. Ltd. (hereinafter referred to new company).

Mr. Mukherjee, learned senior Counsel, in CRM No. 8412 of 2021, submits his client, Ajit Banik, was one of the directors of the former company and presently is a director of the new company. The former company was a family venture between the petitioner and the defacto complainant. Differences and disputes arose between them. Over the issue of illegal removal of Ajit Banik from directorship of the former company, he had approached the National Company Law Tribunal and the decision to remove him from directorship was set aside. Thereafter, he continued to run the business in accordance with rules and formed a new company in 2015-16. Belatedly, the instant case has been registered.

Learned Counsels appearing for the State in both the matters oppose the prayer for anticipatory bail and submit that the petitioners, in collusion with one another, had forged and manufactured documents in order to transfer the business of the former company to the new one. Documents are lying in the control and custody of the petitioners which require verification during investigation.

Learned Counsel appearing for the defacto complainant submits that the petitioners had illegally transferred a licence for manufacturing of chemicals in favour of the new company. Pursuant to direction given by a learned Single Judge of this Court in W.P. No. 1089 of 2018, the appropriate authority had cancelled the licence. In the course of hearing, it came to light a purported board resolution was manufactured by the petitioner and on the strength of the said manufactured resolution transfer had been effected.

This, however, is denied by the petitioners who submit that they are ready and willing to co-operate with investigation.

We have considered the materials on record. A long standing feud is continuing between the members of the family over control of the companies. Initially, Ajit Banik was removed from directorship of the erstwhile company which came to be set aside by the National Company Law Tribunal. Allegations have been levelled against him and the Chartered Accountant i.e. Hitangshu Kumar Chaki that they have on the strength of forged and fabricated documents transferred the business of the former company to the new company. Incident relates to transactions in 2015-16 and even though it is contended the defacto complainant came to know of it in 2018, we note that investigation is continuing for the last three years.

In view of nature of allegations which appears to revolve around authenticity of a board resolution, a copy whereof is available in the records of the authority concerned and as possibility of false allegation due to pre-existing enmity over to wrest control over the business cannot be wholly ruled out, we are of the opinion though custodial interrogation of the petitioners may not be necessary, they require to co-operate with investigation in accordance with law.

Accordingly, we direct that in the event of arrest the petitioners shall be released on bail upon furnishing a bond of Rs.10,000/- (Rupees Ten Thousand Only) each, with two sureties of like amount each, 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 and on further conditions that the petitioners shall meet the investigating officer and also render all possible assistance for seizure and recovery of documents, if necessary. Petitioners shall appear before the court below and pray for regular bail within a period of four weeks from date.

This application for anticipatory bail of the petitioners in both the matters is, thus, allowed.

(Bivas Pattanayak, J.) **(Joymalya Bagchi, J.)**