

23.02.2021
Item no.12
Ct. No.42
CHC

**C.R.R. No.1870 of 2020
(Physical Hearing)**

In Re:- A petition under Section 482 of the Code of Criminal Procedure.

And

In the matter of:-

Rajkumar Jadav

... Petitioner

Mr. Moyukh Mukherjee,

Mr. Rameez Alam

...for the petitioner

Mr. Soubhik Mitter,

Ms. Rajnandini Das

...for the opposite party no.2

Mr. Madhusudan Sur, Ld. A.P.P.

Mr. Dipankar Paramanick

...for the State

This is for quashing of a proceeding being G.R. Case No.1350 of 2020 arising out of Purulia (M) Police Station Case No.195 of 2020 dated 19th September, 2020 under Sections 420/406/407/120B of the Indian Penal Code, now pending before the learned Chief Judicial Magistrate, at Purulia.

Admittedly, the proposed quashment has been advanced in connection with the case, which is undergoing investigation at the moment. A complaint came to be filed by complainant Project Manager of Montecarlo on 19th September, 2020 alleging inter alia, that the consignment of materials, effected in part, in course of surprise visit could be detected that some project materials,

already consigned, had been missing from the site in consequence of alleged conspiracy, as a fall out of criminal breach of trust and a deep rooted cheating caused to the complainant company. The police being posted with the allegations involved in the FIR, a notice under Section 41A Cr.P.C. was served upon the petitioner/revisionist on 6th October, 2020 requiring his presence just to obtain required assistance, as enshrined in Section 41A Cr.P.C. The said notice could not be responded to petitioner ensuring his presence before the Investigating Officer after making due compliance of the direction contained in Section 41A Cr.P.C. Petitioner, thereafter, preferred anticipatory bail, which was rejected by the Division Bench of this Court in connection with C.R.M.8926 of 2020 upon visualizing the involvement of the petitioner with the alleged offence and also bearing in mind the chance of recovery of the articles, said to have been misappropriated. The Division Bench was of the view that custodial interrogation was necessary in the instant case.

Learned advocate, Mr. Moyukh Mukherjee representing the petitioner submits that the name of the petitioner does not find place in the FIR, and on the basis of statement of coaccused, which is not admissible in evidence, the petitioner cannot be roped in this case. Though there has been rejection of the prayer for anticipatory bail, but Mr. Mukherjee proposes for granting immunity from arrest to the petitioner, for want of materials transpired in the FIR, already lodged in this case.

Mr. Sur, learned advocate, representing the State raises strong objection against the prayer for quashing together with immunity sought to be obtained in this case as regards arrest taking support of the materials already collected in the C.D. Some of the pages have been shown in order to justify the specific and direct involvement of the petitioner with respect to the alleged offence.

Mr. Mitter, learned advocate representing private opposite party no.2 supporting the stand of Mr. Sur contends that since the case is at the investigation stage and since there is material transpiring direct involvement of the petitioner, the proposed quashment should be refused.

According to Mr. Sur and Mr. Mitter, the FIR cannot be expected to contain all materials, supportive of a prosecution, and it is the investigation, which may collect the materials justifying involvement of the petitioner.

The points now traversed by either of the parties to this case are thus squeezed to one and only significant point that the case is at the investigation stage, wherein the prayer for anticipatory bail has already been rejected by Division Bench of this Court. There is chance of recovery of the articles, said to be the subject matter of criminal misappropriation, as alleged to have occasioned in this case.

At this stage it is not desirable that the Court will embark upon an enquiry in justification of genuineness or falsity of the complaint. It is the settled proposition of law that unless there is

glaring illegality or there is prohibition as regards institution of a criminal case, the extraordinary power available under Section 482 Cr.P.C. should not be exercised. In view of the materials already collected in the C.D. the chance of recovery cannot be eliminated at this stage. More so, there are materials in the C.D. transpiring involvement of the petitioner, whatever might the status of petitioner, be it a conspirator or otherwise revealing his contribution to the offence, complained of.

Having considered the submission of both sides and bearing in mind the rejection of prayer for anticipatory bail, the Court is not inclined to pass any order granting immunity from arrest of the petitioner, as proposed by Mr. Mukherjee. The immunity from arrest is thus refused, since the investigation is at the initial stage. It will not be advisable at this moment to stall the instant prosecution. The prayer for quashing is also refused being without any merits. The revisional application stands disposed of.

The State is directed to undertake expeditious and vigorous investigation and submit the outcome of the investigation expeditiously as possible.

In order to facilitate the investigation petitioner is directed to offer himself to the course of law as a law abiding citizen.

With this observation/direction, the instant revisional application stands disposed of.

I.O. is present and be released.

C.D. of this case be returned.

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

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

(Subhasis Dasgupta, J.)