16.02.2022
cm/ct 28
sl no. 8

CRM 2703 of 2020

In Re : An application for bail under section 439 of the Code of Criminal Procedure in connection with Islampur Police Station Case No. 17 of 2014 Corresponding CBI case no RC-21/E/2017 under section 406, 420, 120B of Indian Penal Code read with section 4,5, 6 of the Prize Cheats & Money Circulation Scheme (Banning) Act, 1978.

And

Allowed

Mr. Jayanta Narayan Chatterjee
Mr. Debashish Mitra
Mr. Anjan Gaujam
Mr. Nazir Ahmed
Mr. Supreem Naskar
Mr. Arka Mahata
Ms. Sreparna Ghosh
Mr. Subhradeep Koley
... for the petitioner

Mr. Y.J. Dastoor, Additonal Solicitor General
Mr. Phiroze Edulji
Mr. Samrt Goswami
...... for the CBI

Liberty is given to the petitioner to amend the cause title.

Petitioner is in custody on and from 07.11.2019, that is, for more than two years. It is contended he has been falsely implicated in the instant case. Petitioner submits that he carried on bona fide business and the ingredients of the alleged offences are not disclosed. It is further submitted offence under Section 409 IPC was not reflected in the FIR or initial charge-sheet but was subsequently added in the supplementary charge-sheet and the ingredients of the said offence are not disclosed in the facts of the case.

Learned Additional Solicitor General opposes the prayer for bail. He submits that petitioner was the Managing Director of M/s.

Golden Pariwar Holding and Developers (India) Limited and had in collusion with other accused persons duped innocent depositors over Rs. 13 crores. A sum over Rs.1 crore was diverted to the account of the petitioner and other amounts were diverted in the account of other accused persons. Petitioner had absconded and was finally arrested in connection with Chandrapura P.S. Case No. 21/2016 in Jharkhand on 06.12.2018. Subsequently, he was produced before the Magistrate in this case on 7.11.2019. There is chance of abscondence of the petitioner in the event he is released on bail. Other accused persons are also absconding.

In reply, learned Counsel for the petitioner submits he has been enlarged on bail in the Chandrapura case at Jharkhand.

We have considered the materials on record including the report submitted on behalf of the investigating agency. In the report it is alleged that petitioner and other accused persons had illegally invited deposits to the tune over Rs. 13 crores from the public without permission from RBI, SEBI etc. Another case has been registered against the petitioner in Jharkhand, being Chandrapura P.S. Case No. 21/2016 wherein he was arrested on 6.12.2018. Thereafter, he was produced in this case on 07.11.2019 and had been remanded to police custody.

From the materials on record it appears initial charge-sheet was filed against the petitioner in November, 2019 wherein offence under Section 409 IPC had not been alleged. However, in the subsequent charge-sheet offence under Section 409 of the Indian Penal Code has been added. It is contended on behalf of the prosecution as petitioner was a Managing Director of one of the defaulter companies, a fiduciary relationship of agency is created between the petitioner and the company which would attract Section 409 of the Indian Penal Code. It is relevant to note none of the depositors are shareholders of the company and, therefore, whether alleged misappropriation would attract Section 409 of the Indian Penal Code requires to be assessed in the course of trial. Other offences alleged against the petitioner involve term imprisonment. Although, the allegations levelled against the petitioner are grave affecting a large number of depositors, a balance has to be struck between the gravity of the offence on the one hand and the period of under-trial detention suffered by the petitioner on the other hand. In the present case, we note investigation is already over and petitioner had been remanded to police custody during further investigation is not necessary. Thus, further detention for investigational purposes in the factual matrix of the case.

In this regard reference to **K.K. Jerath vs. Union Territory Chandigarh & Ors**.[1] is in apposite as detention for the purpose of investigation has been substantially satisfied in this case.

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[1] (1998)4 SCC 80

In the case of **Nimmaagada Prasad Vs. CBI**[2] the Apex Court inter alia held that the grant of bail in economic offences require to be treated on a different plain and since such offences adversarily affect the economic and financial health of the country.

We are fully conscious of the gravity and the seriousness of the offences alleged against the petitioner. However, apart from Section 409 IPC (applicability whereof requires to be thrashed out in the course of trial) none of the other offences involve indeterminate sentence. Petitioner has already undergone detention for more than two years. During this period, he was subjected to custodial interrogation and presently investigation is complete.

The other cited decision, **Kalyan Chandra Sarkar Vs. Rajesh Ranjan @ Pappu Yadav & Ors**[3]. relates to a case of murder where the accused was a very influential person and had intimidated witnesses. Factual matrix of the present case is wholly suffered. The instant case revolves around documents which are in the control and custody of the investigating agency. A sum of over Rs. 75/- lacs has already been seized in the account of the petitioner and other accounts of the petitioner and co-accused persons have also been frozen. Thus, there is no question of tempering with evidence affecting the fate of the prosecution in this case. Finally, it may be noted the prosecution proposes examination of a large

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[2] (2013) 7 SCC 466

[3] (2004)7 SCC 528

number of witnesses and prove of an enormous volume of documents. There is little possibility the trial would conclude in the near future. Petitioner has already undergone considerable period of detention. In view of the aforesaid facts, we are of the considered opinion that further detention of the petitioner is not necessary and he may be granted bail on strict conditions which would ensure his regular attendance in court.

Accordingly, the petitioner be released on bail upon furnishing a bond of Rs. 50,000/- with two sureties of Rs. 25,000/- each, one of whom must be local, to the satisfaction of the learned ACJM, Islampur, Uttar Dinajpur on condition that the petitioner while on bail shall remain within the District of Uttar Dinajpur except for the purposes of attending other court proceedings, meeting the investigating agency and provide address where he shall be residing to the court below as well as to the Investigating Officer, namely, Chandan Kumar Chand of the case and shall meet the aforesaid Investigating Officer once in a month, that is, on first Monday of each month or until further orders. He shall attend the court proceedings on every date of hearing without fail and shall not tamper with evidence and intimidate witnesses on any manner whatsoever.

In the event he fails to appear before the trial court without justifiable cause, the trial court shall be at liberty to cancel his bail automatically without reference to this court.

The application being CRM 2703 of 2020 is disposed of

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