15.09.2022
Serial no.36
Aloke

CRM (A) 3558 of 2022

In re : An application for under Section 439(2) of the Code of Criminal Procedure.

In the matter of: **Tamal Kumar Bhattacharjee**
… … Petitioner

Mr. Souvik Mitter, Advocate
Mr. Subhankar Chakraboarty, Advocate
Ms. Ruchira Manna, Advocate
… … For the Petitioner
Mr. Subrata Bhattacharya, Advocate
Mr. Indranuj Dutta, Advocate
… … For the opposite party no. 2 to 4

Mr. Rudradipta Nandy, ld. APP
Ms. Sonali Das, Advocate
… … For the State

Petitioner seeks cancellation of the order granting anticipatory bail dated February 12, 2021 passed by the learned Sessions Judge.

Learned Advocate appearing for the petitioner submits that the petitioner obtained gold loan in excess of Rs.97 lakhs by pledging fake gold with the bank. This fact was not taken into consideration by the learned Sessions Judge while granting the order of anticipatory bail. He submits that, the bank discovered the falsity of the gold pledged on behalf of the private opposite parties after undertaking an inspection with regard thereof. According to the petitioner, the private opposite parties are involved in defrauding the bank along with the valuer, goldsmith and the bank officials. The petitioner is proceeding against all of them.

State and the private opposite parties are represented.

Learned Advocate appearing for the private opposite parties submits that, the bank opened the locker without notice to his clients. Thereafter, the bank substituted the gold which was deposited originally. Therefore, there is no infirmity in the order granting anticipatory bail to the private opposite parties.

Learned Advocate appearing for the State points out that, in response to the demand notice issued by the bank, the private opposite parties agreed to settle the loan amount. He points that the private opposite parties admitted that the jewellery were spurious in nature.

The learned Advocate appearing for the private opposite parties submits that admission was at best relating to only one account.

The bank lent and advanced money to the private opposite parties. Such fact is admitted. There is a demand notice recalling the loan.

The private opposite parties did not pay in terms of the demand notice. The private opposite parties did not discharge their liabilities to the bank. On the contrary there is an admission in writing that spurious jewellery were pledged by the opposite parties.

There is an allegation of defrauding the bank by pledging spurious gold. Loan was obtained by practising fraud. Usufruct of the fraud being the loan granted by the bank is yet to be recovered. The private opposite parties acknowledges the receipt of the loan. They are yet to return the loan.

In such circumstances, since the usufruct of the crime is yet to be recovered, it would be inappropriate to enlarge the private opposite parties on anticipatory bail. Such aspect is crucial for consideration for grant of an order of anticipatory bail.

The learned Judge overlooked such aspect while granting anticipatory bail. So, such an extent the order granting anticipatory bail can be said to be perverse.

In such circumstances, we cancel the anticipatory bail granted by the order dated February 12, 2021.

All consequently steps taken in terms of the order granting anticipatory bail are also cancelled.

CRM (A) 3558 of 2022 is disposed of.

(Debangsu Basak, J.)

(Md. Shabbar Rashidi, J.)