

IN THE HIGH COURT AT CALCUTTA
Criminal Miscellaneous Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Debangsu Basak

And

The Hon'ble Justice Bibhas Ranjan De

CRM (DB) 1918 of 2022
Blooming Projects Private Limited
Vs.
The State of West Bengal

For the Petitioner	: Mr. Suresh Sahni, Adv. Mr. Souvik Ghosh, Adv. Ms. Karuna Bose, Adv.
For the State	Mr. Ranabir Ray Chowdhury, Adv. Mr. Mainak Gupta, Adv.
For the Opposite Party No. 2	: Mr. Sandipan Ganguly, Sr. Adv. Mr. Karan Dudhwewala, Adv.
Heard on	: August 1, 2022
Judgement on	: August 4, 2022

DEBANGSU BASAK, J.:-

1. Petitioner has applied for cancellation of anticipatory bail granted by the Learned Chief Judge, City Sessions Court, Calcutta in Criminal Misc. Case No. 187 of 2022 by the order No. 2 dated May 20, 2022 in favour of the opposite party No. 2.

2. Learned advocate appearing for the petitioner has submitted that, the opposite party no. 2 was the statutory auditor of the

petitioner. As the statutory auditor of the petitioner, the opposite party no. 2 had been responsible for the preparation of the balance sheet and accounts of the petitioner. The opposite party No. 2 had shown a sum of Rs. 1.66 crores to be deposited as fixed deposits with HDFC Bank in the name of the petitioner. The petitioner had subsequently discovered that, such fixed deposits were fake. The opposite party No. 2 had taken the money in collusion and conspiracy with his brother. Consequently, the petitioner had lodged the First Information Report with the police.

3. Learned advocate appearing for petitioner has submitted that, the First Information Report cannot be considered as the encyclopedia of all the events. He has referred to the bank accounts of the petitioner and submitted that, the brother of the opposite party No. 2 had benefited out of the money belonging to the petitioner. He has referred to various entries in the bank account of the petitioner whereby, according to him, it can be established that, the brother of the opposite party No. 2 had received diverse amounts on different dates from the bank account of the petitioner. The brother of the opposite party No. 2 was not entitled to such amounts and that he had received the amounts wrongfully and illegally.

4. Learned advocate appearing for the petitioner has referred to the affidavit filed on behalf of the opposite party No. 2. He has drawn the attention of the Court to the fact that such affidavit has not been affirmed by the opposite party No. 2 himself. He has submitted that the opposite party No. 2 has not affirmed such affidavit himself and that the opposite party No. 2 has adopted such course of action deliberately, so that, in the event, the Court finds that the opposite party No. 2 had misled this Hon'ble Court, then the petitioner would not be in a position to file a complaint with the Institute of Chartered Accountants since, the affidavit has not been affirmed by him.

5. Learned Advocate appearing for the petitioner has relied upon **2022 Volume 5 Supreme Court Cases 465 (Jaibunisha vs. Meherban and Another)**, **2022 Volume 6 Supreme Court Cases 609 (Ishwarji Nagaji Mali vs. State of Gujarat and Another)**, **2021 Volume 3 Supreme Court Cases 729 (Rekha Sengar vs. State of Madhya Pradesh)**, **2001 Volume 6 Supreme Court Cases 338 (Puran vs. Rambilas and Another)** in support of his contention that bail cannot be granted arbitrarily. He has contended that filing of a charge sheet is not a sufficient ground to reject a prayer for cancellation of anticipatory bail. He has contended that, the Learned Judge while granting the impugned

order of anticipatory bail, did not consider the relevant materials. He has drawn the attention of the Court to the impugned order and submitted that, the Learned Judge had proceeded on an erroneous basis which is *ex facie* apparent from the face of the records. He has drawn the attention of the Court to the fact that the police had filed charge sheet against the opposite party No. 2 invoking a provision of the Indian Penal Code, 1860 which speaks of a heinous Crime. Therefore, according to him, the order granting anticipatory bail in favour of the opposite party No. 2 should be cancelled.

6. Learned advocate appearing for the State has drawn the attention of the Court to the materials in the case diary. He has contended that, the petitioner was asked by the investigating authority as to the details of the amounts and the accounts from where the money was allegedly defalcated by the brother of the opposite party No. 2. He has contended that the police had not received any response to such query.

7. Learned Senior advocate appearing for the opposite party No. 2 has referred to the affidavit of the opposite party No. 2. He has also referred to the First Information Report of the petitioner. He has submitted that the First Information Report speaks of four fixed deposits with deposit start from August 28, 2017 to

December 28, 2017 aggregating to a sum of Rs. 1.66 crores alleged to be made in the name of the petitioner with HDFC Bank, Stephen House Branch. He has contended that, the petitioner being a company within the meaning of the Companies Act, 2013 is required to disclose the existence of such fixed deposits in the balance sheet of the petitioner. He has referred to the balance sheet of the petitioner from the year ended March 31, 2017 onwards and contended that, the balance sheets of the petitioner does not disclose that the petitioner had fixed deposits of such amounts. Therefore, according to him, in the first place where the petitioner had no such fixed deposits in its name with any bank, as complained of in the First Information Report, the question of cancellation of the anticipatory bail does not arise.

8. The petitioner had complained to the police on October 11, 2021 with regard to the dealing of the petitioner on one part and the opposite party No. 2 and his brother on the other. In the police complaint, the petitioner had alleged that, the opposite parity No. 2 was the statutory auditor of the petitioner for the period of time involved. The opposite party No. 2 along with his brother had jointly defalcated the petitioner and made unlawful gains to themselves and unlawful loss to the petitioner to a sum of Rs. 1.66 crores. According to the petitioner, the opposite Party No. 2 and

his brother instead of depositing the sum of Rs. 1.66 crores with the bank of the petitioner had taken out such amount from the petitioner and submitted fictitious fixed deposits receipts of HDFC Bank, Stephen House Branch, with the petitioner. The petitioner was in need of funds on or about September 17, 2021 and so had decided to encash the fixed deposits receipts prematurely. The petitioner had asked the brother of the opposite party No. 2 for encashment of such fixed deposits receipts whereupon it was stated that the same was not possible on as quickly as wanted by the petitioner. The petitioner had thereafter, enquired with the HDFC Bank, Stephen House Branch, with regard to the subject fixed deposits whereupon the bank had informed the petitioner that such fixed deposits receipts were fake.

9. On the basis of the complaint of the petitioner, the police had lodged a First Information Report and initiated Hare Street Police Station Case No. 225 dated October 12, 2021 under Section 409/ 420/467/ 468/ 471/ 120B of the Indian Penal Code, 1908. The police had filed a charge sheet therein.

10. The opposite party No. 2 had applied for anticipatory bail before the City Sessions Court which was considered by the impugned order dated May 20, 2022 the opposite party No. 2 was enlarged on anticipatory bail.

11. While granting the prayer for anticipatory bail to the opposite party No. 2, the Learned Judge had observed in the impugned order that, the allegations were levelled against the brother of the opposite party No. 2. The Learned Judge had observed that, the opposite party No. 2 was not the beneficiary of the defalcated amount. He had also observed that there was no document in the case diary from where it would be revealed that the petitioner had made any resolution of the board of directors questioning about the credentiality of the private opposite party No. 2 as a chartered accountant. Consequently, the Learned Judge had observed that custodial interrogation of the chartered accountant for fair investigation would be of no use and proceeded to grant anticipatory bail to the private opposite party No. 2.

12. *Puran (supra)* has observed that, one of the grounds for cancellation of bail would be where ignoring material and evidence on record, a perverse order granting bail has been passed in a heinous crime and that too without giving any reasons. Such an order would be against principles of law and that interest of justice would require that a perverse order is set aside and the bail cancelled. It has observed that an arbitrary and wrong exercise of discretion of the Trial Court has to be corrected.

13. *Rekha Sengar (supra)* has observed that, in non-bailable case the primary factors the Court must consider while exercising the discretion to grant bail are nature and gravity of offence, its impact on society and whether there is a prima facie case against the accused.

14. *Ishwarji Nagaji Mali (supra)* has also made observations with regard to the factors to be borne into mind while considering an application for bail. It has held as follows:-

“9.5. In Prasanta Kumar Sarkar v. Ashis Chatterjee [Prasanta Kumar Sarkar v. Ashis Chatterjee, (2010) 14 SCC 496 : (2011) 3 SCC (Cri) 765] this Court observed that where a High Court has granted bail mechanically, the said order would suffer from the vice of non-application of mind, rendering it illegal. This Court held as under with regard to the circumstances under which an order granting bail may be set aside. In doing so, the factors which ought to have guided the Court's decision to grant bail have also been detailed as under : (SCC p. 499, para 9)

“9. ... It is trite that this Court does not, normally, interfere with an order passed by the High Court granting or rejecting bail to the accused. However, it is equally incumbent upon the High Court to exercise its discretion judiciously, cautiously and strictly in compliance with the basic principles laid down in a plethora of decisions of this Court on the point. It is well settled that, among other circumstances, the factors to be borne in mind while considering an application for bail are:

- (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;*
- (ii) nature and gravity of the accusation;*
- (iii) severity of the punishment in the event of conviction;*
- (iv) danger of the accused absconding or fleeing, if released on bail;*
- (v) character, behaviour, means, position and standing of the accused;*
- (vi) likelihood of the offence being repeated;*
- (vii) reasonable apprehension of the witnesses being influenced; and*
- (viii) danger, of course, of justice being thwarted by grant of bail.”*

15. *Jaibunisha (supra)* has reiterated the factors to be considered while granting bail to an accused. It has observed that if bail has been granted in a casual manner the police or the complainant has the right to apply for setting aside or order before the higher forum.

16. An order granting anticipatory bail can be cancelled by the High Court if the applicant establishes that, the order had been passed arbitrarily, is perverse, or the accused is guilty of post bail misconduct or there are new materials implicating the accused.

17. Neither at the stage of granting anticipatory bail nor at the stage of cancellation of an order granting anticipatory bail is the Court called upon to discuss or examine the evidence in details or return conclusive findings with regard thereto. The Courts are

however required to give reasons for the grant or non-grant of the relief sought for. Stating the reasons for the grant or non-grant of the relief sought for is different from discussing the merits and demerits of the case elaborately. [See ***Puran (supra)***].

18. In the fact of the present case, the petitioner has contended that the learned judge had passed the impugned order arbitrarily and that the impugned order suffers from the vice of perversity. The impugned order has to be assessed as to whether it suffers from arbitrariness or perversity as complained of by the petitioner or not.

19. The private opposite party No. 2 is a chartered accountant and had been appointed as the statutory auditor of the petitioner company. He had been the statutory auditor of the petitioner for the period in question.

20. The complaint to police dated December 10, 2021 made by the petitioner and the consequent First Information Report registered by the police on such basis cannot be treated as an encyclopedia of all facts. The police complaint of the petitioner, shrown of necessary details, alleges that the opposite party No. 2 in collusion and conspiracy with his brother had caused wrongful loss to the petitioner to the tune of Rs. 1.66 crores by creating fake fixed deposits with HDFC Banks, Stephen House Branch from out

of funds of the petitioner and illegally making wrongful gain of the same. It speaks of four fixed deposits in the name of the petitioner, aggregating to a sum of Rs. 1.66 crores being made with HDFC Bank, Stephen House Branch, with the deposit start date commencing from August 28, 2017 onwards.

21. In course of hearing, we had called upon the State to show us materials from the case diary suggesting that the petitioner created the fixed deposits during the periods concerned or that the petitioner has such funds in its bank accounts to create the same. Learned Advocate for the State has submitted that, the State had by a letter called upon the petitioner to provide such details which the petitioner is yet to provide.

22. We had also called upon the petitioner to provide the materials on the basis of which the police complaint was lodged. In response learned Advocate for the petitioner has relied upon the bank account of the petitioner. The bank account of the petitioner, as has been relied upon, does not show that four fixed deposits as claimed had been created out of the funds of such account. It has however various entries, not of the corresponding dates of the fixed deposits but of other dates suggesting payments being made to the brother of the opposite party No. 2. Whether such payments were

wrongfully made to the brother of the opposite party No. 2 is an issue which need not be decided in this application.

23. The balance sheets of the petitioner that it had filed with the Registrar of Companies for the period March 31, 2017 onwards has no reflection of the four fixed deposits aggregating to Rs. 1.66 crores.

24. Whether or not there was money in the bank account of the petitioner for the brother of the private opposite party No. 2 to defalcate with the connivance with the private opposite party No. 2 as alleged is an issue of fact which need not be decided at this stage. Apparently, at this stage, the petitioner is unable to establish on prima facie basis that, the petitioner had a sum of Rs. 1.66 crores in its accounts at the relevant period of time and that the same stood reflected in the balance sheet of the company at the relevant point of time.

25. In the facts of the present case, the case diary does not contain any materials to suggest that, as on March 31, 2017 and the financial years thereafter, the petitioner as the company had, a sum Rs. 1.66 crores as fixed deposits or its bank accounts reflected in its balance sheet. The allegation in the police complaint is with regard to defalcation of the sum of Rs. 1.66 crores by the brother of the private opposite party No. 2 in

connivance with the opposite party No. 2 by creating fictitious fixed deposits of the sum of Rs. 1.66 crores in the name of the petitioner. In absence of the case diary containing any materials to such effect and the balance sheet of the petitioner not reflecting such amount, it cannot be said that the Learned Judge wrongly exercised discretion vested upon it in law in granting anticipatory bail to the private opposite party No. 2.

26. In such circumstances, we are unable to interfere with the order of grant of anticipatory bail in favour of the private opposite party No. 2, as impugned herein. We add that the observations made herein are prima facie and shall not prejudice the parties at any other stage of the proceedings.

27. CRM (DB) 1918 of 2022 is, therefore, dismissed.

[DEBANGSU BASAK, J.]

28. I Agree.

[BIBHAS RANJAN DE, J.]