

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

The Hon'ble **JUSTICE BIBEK CHAUDHURI**

CRR 2181 of 2022
With
I.A. No. CRAN/1/2022

Bidesh Basu
-Vs-
Securities & Exchange Board of India

For the Petitioner: Mr. Ayan Basu, Adv.,
Mr. D.N. Maiti, Adv.,
Mr. Sumit Routh, Adv.

For the S.E.B.I:- Mr. Sandipan Ganguly, Ld. Sr. Adv.,
Mr. Sudip Kr. Dutta, Adv.

Heard on: 17 August, 2022.

Judgment on: 09 September, 2022.

BIBEK CHAUDHURI, J. : –

1. The petitioner is the accused No.4 in connections with SEBI Case No.32 of 2018.
2. The aforesaid case has been registered in the 5th Special Court (SEBI) at Calcutta on the basis of a complaint for prosecution for violation of Sections 56/60/67/68/70 read with Sections 2(36)/73 of the Companies Act, 1956 read with Section 40 of the Companies Act, 2013 and Regulation 3 of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to

Securities Market) Regulations, 2003 and Regulations 6/19/4(2)/5(2)(b)/8 of the Securities and Exchange Board of India (Issue and Listing of Debt Securities) Regulations, 2008 read with Sections 117B and 117C of the Companies Act, 1956 and Section 12 of the Securities and Exchange Board of India Act, 1992.

3. It is alleged in the petition of complaint that the complainant, a statutory body, conducted an examination with respect to illegal fund mobilization by the accused No.1/company available from the correspondences exchanged between the complainant and the said company along with the documents contained therein, information obtained from the Ministry of Corporate Affairs website under the name and style of “MCA 21 Portal” and it was found that during the financial years 2011-12, 2012-13 and 2013-14, the accused No.1/company had raised an amount of at least Rs.4.34 crore, Rs.14.20 crore and Rs.19.36 crore respectively by issuing Non-Convertible debentures to huge number of investors during each of the said financial year. Therefore, the accused No.1 on an aggregate had allotted Non-Convertible Debentures to at least 14256 persons, thereby making it a public issue of securities. This was done without complying with the regulatory provisions applicable to public issue.

4. The learned Special Judge took cognizance of offence against the accused persons including the present petitioner who has been arrayed as accused No.4 on the allegation that at the relevant point of time he was one of the directors of accused No.1/company.

5. Learned Judge issued warrant of arrest against the accused persons following the ratio of decision of this Court passed in CRR No.1137 of 2015 (Shibamoy Dutta & Ors. vs. Monoj Kumar). Subsequently, some of the accused person other than the present petitioner surrendered before the trial court and were granted bail.

6. The petitioner, on the other hand filed an application under Section 70(2) of the Code of Criminal Procedure praying for recalling the warrant of arrest issued against him by the Trial Judge. The learned Judge by passing a reasoned order rejected the said application.

7. Being aggrieved, the petitioner has assailed the order dated 6th May, 2022 in the instant revision.

8. It is submitted on behalf of the petitioner that at the relevant point of time when the accused No.1/company was said to have committed offence, the petitioner was not a director of accused No.1/company.

9. Such contention of the petitioner is not sustainable in view of the fact that the petitioner himself has filed a document uploaded in the official portal of the Ministry of Corporate Affairs wherefrom it is ascertained that the petitioner was appointed as a director of accused No.1/company on 4th November, 2013 and he remained as director till 23rd August, 2014. Thus, the petitioner was one of the directors of accused No.1/company during the financial year 2012-13 and 2013-14.

10. It is rightly observed by the learned Trial Judge that an offence under the SEBI Act is punishable for imprisonment which may extend to ten years.

11. It is submitted on behalf of the petitioner that in view of the decision of the Hon'ble Supreme Court in **Satender Kumar Antil vs. Central Bureau of Investigation & Anr.** reported in **(2021) 10 SCC 773** the initial order passed by the learned Trial Judge issuing warrant of arrest against the petitioner and other accused persons after taking cognizance is bad in law because ordinarily summons ought to have been issued at the first instance against the petitioner permitting him to appear through his lawyer. If the petitioner failed to appear before the trial court the learned Judge was empowered to file bailable warrant. At the third stage, if the petitioner failed to surrender before the court in pursuance to bailable warrant, the trial court was empowered to pass an order issuing non-bailable warrant against the accused/petitioner. On the same analogy, it is submitted on behalf of the petitioner that the impugned order dated 6th May, 2022 is illegal, inoperative and the learned trial judge failed to act within his power vested under the law.

12. In **Satender Kumar Antil (supra)** the Hon'ble Supreme Court has categorized the offences into four groups:-

- A) Offences punishable with imprisonment of 7 years or less not falling in Categories B and D.
- B) Offences punishable with death, imprisonment for life, or imprisonment for more than 7 years.
- C) Offences punishable under Special Acts containing stringent provisions for bail like NDPS (Section 37), PMLA (Section 45), UAPA [Section 43s-D(5)], Companies Act [Section 212(6)], etc

D) Economic offences not covered by Special Acts.

13. Obligation to issue summons against the accused persons after filing of charge-sheet/complaint taking of cognizance arises in respect of the offences falling under Category-A mentioned hereinabove. In respect of the offences mentioned in Categories-B, C and D, the guideline made by the Hon'ble Supreme Court in respect of Category-A is not applicable.

14. For the reasons stated above, I do not find any illegality or material irregularity in the order dated 6th May, 2022 passed by the learned Special Judge, 5th Court at Calcutta.

15. The instant criminal revision is devoid of any merit and accordingly dismissed on contest.

16. The parties are at liberty to act on the server copy of this order.

(Bibek Chaudhuri, J.)