

CRR 1949 of 2019

In the matter of : Ganpatlal Agarwala & Anr.

.....Petitioners

Mr. Sandipan Ganguly
Mr. Ayan Bhattacharjee
Mr. Anjan Datta
Mr. Suman Pathak

...for the Petitioners

Mr. Dhiraj Trivedi
Mr. Pradyut Saha

....for the CBI

The present revisional application has been preferred for setting aside of the order dated 3rd May, 2019 passed by the court of learned Judge, 3rd Special (CBI) designated court in case no. RC 01/E/16 thereby granting interim bail to the petitioners on condition that the interim bail of the petitioner will be confirmed on payment of outstanding Non-Performing Asset (in short NPA) to be ascertained on DRT proceedings.

Learned counsel for the petitioner Mr. Sandipan Ganguly submits that the petitioner has been falsely implicated in connection with CBI case 1/E/2016 Calcutta dated 15th January, 2016, under Section 120B/420/467/468/471 of the Indian Penal Code read with Section 13(2) and 13(1)(d) of the Prevention of Corruption Act, 1988(in short, PC Act). After investigation, the investigating agency submitted a charge-sheet on 2.7.2018 against 14 accused persons including the present petitioner namely Sangita Agarwala. The petitioner all along co-operated with the investigating agency and she was never been arrested

during investigation. In spite of full co-operation with investigating agency learned trial Court had issued warrant of arrest against the petitioner and as such the petitioner surrendered before the learned 3rd Special Judge (CBI designated court) Bankshall Court on 22.4.2019 and upon surrender, the petitioner was taken into custody and was remanded till 3.5.2019. On 3.5.2019, the petitioner prayed for bail and learned Judge granted interim bail to the petitioner on condition that the interim bail of the petitioner will be confirmed on payment of outstanding NPA to be ascertained on DRT proceeding.

Mr. Ganguly strenuously argued that the condition is arbitrary and is not sustainable in the eye of law. It is also argued on behalf of the petitioner that since 2006 till 2013 GLPKPL had duly made payment in respect of cash credit facilities qua the cash credit as well as the letter of credit and subsequently, sometimes in the year 2014, due to dishonor of letter of credit by the issuing bank, GLPKPL was declared as a non-performing asset (NPA) by the said Bank for defaulting to the tune of Rs. 14.99 crores in the matter of facility of letter of credit.

Learned counsel on behalf of the CBI Mr. Dhiraj Trivedi submits that public money amounting to Rs. 14.99 crores is involved in the present case and as such, learned trial court has rightly imposed the said condition.

It is trite of law that objective of imposing condition is to secure attendance of accused persons during pendency of trial and is neither punitive nor preventive. Imposition of such odd condition like payment of outstanding NPA towards confirmation of interim bail, not only amounts to denial of confirmation by the

court below but also it hits the basic, principle of innocence under criminal jurisprudence which says that the accused is presumed to be innocent until guilt is proved. The condition as has been imposed in the present case towards confirmation of interim bail of the petitioners “on payment of outstanding NPA to be ascertained on DRT proceeding,” hinders the independence of trial as after going through such condition in the bail order, it is obvious that trial court shall make unwarranted presumption against the accused in respect of his innocence. It is the responsibility of the court while granting bail, to ensure that the condition imposed for granting bail must not frustrate the principle of presumption of innocence in favour of the accused. Imposing of such condition may create an impression during trial that alleged offence was committed by the accused and for which he is accepting the odd condition imposed by the court. Such condition never serves the interest of justice on the part of the accused and society at large as the court granting bail has nothing to do with the conclusion as to whether accused has committed alleged offence or not because it is the duty of the trial court to decide the same after going through all the relevant documents and examining deposition of every witnesses. Accordingly, such conditional order may amount to premature conclusion of trial because on compliance of such order, there might not be anything before the trial court for decision.

Having considered the aforesaid principle of law, the order no. 47 dated 3.5.2019 is modified only to the extent of the condition imposed upon the petitioner towards confirmation of interim bail as follows:

- 1) The petitioner shall submit a local surety who shall be his near relative or who belongs to the localities of the accused persons.
- 2) The petitioner shall file an undertaking on oath:
 - a) The accused/petitioner shall appear before the trial court on every date fixed by the court, for appearance, unless personal appearance is dispensed with by the court.
 - b) The accused-petitioner shall not make any attempt to contact with any prosecution witness directly or indirectly.
 - c) The accused/petitioner shall not make any attempt to tamper with the evidence or influence any witness.
 - d) The accused person/petitioner shall not commit offence similar of the offence which they are accused of.
- 3) The petitioner/accused shall deposit their respective passport before the court below and the accused person shall not leave India without prior permission of the court.

With the aforesaid directions, CRR 1949 of 2019 is thus disposed of with the direction that if the aforesaid conditions are being fulfilled by the petitioner, ld. court may consider for confirmation of their interim bail.

Urgent photostat certified copy of this order, duly applied for, be given to the parties upon compliance of all requisite formalities.

(Ajoy Kumar Mukherjee, J.)

