14.03.2022
Sl. 69
Court No.29
suvayan
(Rejected)

CRM 8080 of 2021
With
CRAN 1 of 2022

In Re: - An application for anticipatory bail under Section 438 of the Code of Criminal Procedure in connection with **Burtolla** P.S. Case No. **2 of 2021** dated **02/01/2021** under Sections **406, 420, 467, 468, 471 & 120B** of the Indian Penal Code.

And

In the matter of: Siddharth Kothari

....petitioner.

Mr. Sandipan Ganguly
Mr. Shiv Shankar Banerjee
Ms. Anupa Banerjee
Ms. Manaswita Mukherjee
Ms. Sanchita Barman Roy
Mr. Karan Dudhwewla

... for the petitioner.

Mr. Sudip Ghosh
Mr. Sanjoy Bardhan
Mr. Bithosok Banerjee
Ms. Baishakhi Chatterjee

...for the State.

Mr. Sourav Chatterjee
Mr. Satadru Lahiri
Mr. Krishna Chandra Das
Mr. Safdar Azam

...for the de facto complainant.

The petition is taken up for consideration subsequent to the earlier order dated March 8, 2022.

There subsists an interim order in favour of the petitioner requiring the petitioner to meet the Investigating Officer and co-operate with the investigations.

Learned Advocate appearing for the State submits that the petitioner although is visiting the Investigating Officer but is not co-operating with investigations. The petitioner is avoiding answering the questions put to him. The petitioner claims that the petitioner is without any knowledge with regard to the share transaction in question. Thereafter, the petitioner issues long electronic mails to the Investigating Officers claiming various things about the share transaction. In effect, the petitioner is not co-operating with the investigations in any manner whatsoever.

Learned Advocate appearing for the petitioner draws the attention of the Court to the contents in the First Information Report lodged against the petitioner. He submits that the petitioner is named at the fag end the First Information Report as one of the persons involved. He draws the attention of the Court to the entirety of the First Information Report. According to him there is hardly any allegation against the petitioner in the First Information Report. The petitioner is neither a shareholder nor a director of the company. There is no document on record to show that petitioner was involved in the transaction of the forty thousand shares spoken of in the First Information Report. He refers to the shareholding pattern of the company as at March 31, 2018 from the records of the Registrar of companies. He submits that the return was signed both by the de facto complainant and the father of the petitioner. He refers to the resignation letter of the father of the petitioner and submits that the signature therein was forged. He draws the attention of the Court to the police complaint lodged by the father of the petitioner with regard to such forgery. He also draws the attention of the Court to the order of the National Company Law Tribunal (NCLT), Cuttack passed in respect of the affairs of the company where the issue of the forty thousand shares is involved.

The de facto complainant is represented.

The police complaint in the present case revolves around forty thousand shares originally standing in the name of the de facto complainant and subsequently shown in the name of the father of the petitioner. It is claimed that the father of the petitioner is the owner of such forty thousand shares of the company. The Investigating Officer wanted to know the nature of transactions by which, the forty thousand shares which was initially standing in the name of de facto complainant came to be in the name of the father of the petitioner. In answer to such queries, the petitioner indulged in whataboutery as rightly contended on behalf of the State. The petitioner did not give any specific answer to such queries.

The petitioner is claiming that he is neither a shareholder nor a director of the company and that the petitioner is not involved in the transactions on one breath, and on the other, he is writing lengthy electronic mails to the Investigating Officer trying to explain the transactions the contention of the petitioner, such action of his suggest that he is not only trying to suppress information rather than co-operate with the investigations but also misguide the investigations, cannot be discounted. Misuse of the interim protection is writ large.

The First Information Report names the petitioner as one of the persons involved in the wrongful transfer of the forty thousand shares initially held by the de facto complainant in the company to the name of the father of the petitioner. The subject shares reflects on the shareholding pattern of the company. The father of the petitioner becomes a shareholder of the company without any consideration being shown to be flowing from either the petitioner or his father to the de facto complainant who was holding such shares prior to the same being shown to be transferred to the name of the father of the petitioner. The share transfer is alleged to be done by the petitioner, his father and the then statutory auditor of the company in collusion and conspiracy with each other. The allegations are serious and presently without any explanation from the petitioner, far to speak of being satisfactory. The attempt of the petitioner to take shelter of no knowledge of such transactions since the petitioner is neither the shareholder nor the director of the company is of some consequence, as since the petitioner is ensconced with an order of pre-arrest bail, and is, therefore, not co-operating with the investigations. The petitioner is essentially misusing the interim protection afforded to him by the Court. The nature of allegations against the accuseds requires a far more robust investigation. The investigation made with the accused not being ensconced with an order of pre-arrest bail is likely to yield better results.

In the facts of the present case, therefore, since the police are of the view that the petitioner is not co-operating with the investigations as appearing from the report submitted by the police and considering the fact that the there is no material placed on record to suggests let alone establish how the subject forty thousand shares belonging to the de facto complainant came to be in the name of the father of the petitioner, we are unable to extend the interim protection granted to the petitioner. The same is directed not to continue any further.

Considering the gravity of the offence and the involvement of the petitioner therein, we are unable to grant anticipatory bail to the petitioner.

Accordingly, the prayer for anticipatory bail of the petitioner is rejected.

C.R.M. 8080 of 2021 with **CRAN 1 of 2022** are dismissed.

(Debangsu Basak, J.)

(Bibhas Ranjan De, J.)