22.12.2022.
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rejected

C.R.M. (DB) 4401 of 2022

In Re:- An application for bail under Section 439 of the Code of Criminal Procedure in connection with Sutahata Police Station Case No. 352 of 2022 dated 19.10.2022 under Sections 409/468/471 of the Indian Penal Code read with Sections 17A/13(2)/13(1)(b) of Prevention of Corruption Act.

And

In the matter of: Shyamal Kumar Adak

Mr. Rajdeep Mazumder, Adv.
Mr. Sourav Chatterjee, Adv.
Mr. Moyukh Mukherjee, Adv.
Mr. Pritam Roy, Adv.
Mr. Koustav Lal Mukherjee, Adv.
Mrs. Aishwarya Bazaz, Adv.

…for the Petitioner.

Mr. Saswata Gopal Mukherji, Ld. PP
Mr. Rudradipta Nandy, Ld. APP.
Ms. Sonali Das, Adv.

…..for the State.

Report with regard to the progress of investigation is placed on record.

Pursuant to the order passed by this Court on 16.12.2022 the investigating agency had prayed for police remand of the petitioner. Accordingly, on 17.12.2022 jurisdictional court remanded the petitioner to police custody for four days. In the course of police custody, further incriminating materials have surfaced. Report placed before us shows the petitioner in collusion with the co-accused, Satyabrata Das had indulged in similar fraudulent activity of fabricating fictitious tenders with regard to works already executed for Haldia Municipality to siphon off public funds. Materials collected in the course of investigation prima facie disclose activities of an organized racket of which the petitioner is the principal player as the former Chairman of the Municipality. The racket indulged in floating of fraudulent tenders with regard to works already executed. Under the guise of such fraudulent work orders monies were siphoned off to favoured contractors causing wrongful loss to the public exchequer and wrongful gain to the accuseds including the petitioner.

In rebuttal, Mr. Majumder, for the petitioner strenuously argues though the tenders were flooded from 2018-2020, F.I.Rs were registered in 2022. Investigation relates to documents which are in custody of the petitioner and further detention is not necessary.

Learned Public Prosecutor submits the crimes were committed by the persons who were in charge of the affairs of the Municipality. The fraudulent transactions were kept under wraps till F.I.R. was registered by a whistle blower. Investigation is at its nascent stage and the learned Judge had wrongfully deprived the investigating agency of further police custody for the purpose of investigation and to trace out the ramifications of the conspiracy for siphoning off public funds.

Petitioner was the former Chairman of Haldia Municipality. Co-accused Satyabrata Das was the head of the Tender Committee. They in collusion with one floated fraudulent tenders with regard to works already executed. Work orders were issued to favoured contractors for fictitious works and monies siphoned off. While petitioner and co-accused were at the helm of affairs of the Municipality, the matters did not come to the light. Subsequently, complaint was lodged by a whistle blower. This explains the delay in registration of F.I.R.

Learned Counsel for the petitioner argues that the petitioner has been victimized due to political considerations. In the light of the aforesaid submission, we have taken care to sift the materials collected during investigation to verify whether the belated allegations are products of malice or not. We are persuaded to hold otherwise. Documents collected in the course of investigation *ex facie* show tender papers relate to earlier works. Work orders were issued by the petitioner against fictitious works and monies were siphoned away on such pretext. These documents cannot be said to have been subsequently manufactured to falsely implicate the petitioner. They disclose the large scale fraud perpetrated by the petitioner while he was in charge of the affairs of the Municipality. Interrogation of the petitioner during police custody also reveals similar unlawful activities with regard to another tender. Further interrogation in police custody is, therefore, necessary to unravel the extent of conspiracy and other crimes, if any.

In view of nature of the crime involving corruption by a public servant resulting in siphoning off public funds and as the investigation is at a preliminary stage, we do not consider it prudent to release the petitioner on bail at this stage.

Application for bail is, thus, rejected.

It is open to the investigating agency to seek further police custody of the petitioner for progress of the investigation, if necessary.

(Ajay Kumar Gupta, J.) **(Joymalya Bagchi, J.)**